This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

TRIAL

OF

CHARLES A. EDMONDS,

COMMISSIONER OF THE LAND OFFICE

OF THE

STATE OF MICHIGAN,

BEFORE THE

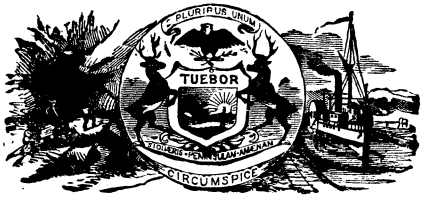
SENATE OF SAID STATE,

ON AN

IMPEACHMENT,

PREFERRED BY THE HOUSE OF REPRESENTATIVES AGAINST HIM, FOR CORRUPT CONDUCT IN OFFICE, CRIMES AND MISDEMEANORS.

VOL. I.



BY AUTHORITY.

LANSING:
W. S. GEORGE & CO., STATE PRINTERS AND BINDERS.
1872.

Hosted by Google

G. F. HITCHCOCK AND

HENRY F. WALCH,

Official Reporters.

Hosted by Google

TRIAL OF CHARLES A. EDMONDS.

PRELIMINARY PROCEEDINGS IN THE HOUSE OF REPRESENTATIVES.

On the 22d day of March, 1872, during the Extra Session, Hon. Ira R. Grosvenor, a Representative from Monroe county, presented the petition of I. H. Bartholomew, R. C. Dart, and 24 others, citizens of the city of Lansing, making complaint and preferring charges of misdemeanors against Charles A Edmonds, Commissioner of the State Land Office.

On motion of Mr. Fenton,

The petition was ordered printed in the journal.

The following is the petition:

To the Honorable the House of Representatives of the State of Michigan:

Whereas, It is susceptible of proof that Chas. A. Edmonds, Commissioner of the State Land Office, has violated act No. 79 of the Session Laws of 1871, which provides that "the drunkenness of any person holding office under the Constitution or laws of this State, shall be good cause for removal from office, by the authority and in the manner provided by law;"

And whereas, The Constitution makes the Legislature the only body having control of this law as regards a State officer, or who can execute the same when it is in session;

And whereas, We believe that said law was enacted to the end that the people of the State might not be made to endure the disgrace of the continuance in public office of men addicted to the use of intoxicating liquors to excess;

Hosted by Google

And whereas, The too free use of liquor leads to other debaucheries and excesses in violation of good order, and disreputable to the participant, bringing disgrace upon himself, and thus upon those who have confided the public trust to him, of which debaucheries and excesses it can be proven by undoubted testimony, Mr. Edmonds is guilty;

And whereas, Mr. Edmonds has in his employ as clerks in the State Land office, men who publicly violate the laws of good order and decency, and who use intoxicating liquors to excess;

Therefore, To the end that the law passed in 1871 may not be a dead letter on our statute books, and the people forced to endure the disgrace of having such men in public places where they are compelled to come in contact with them, and be subjected, whenever hate or envy dictate, to the damning words gathered from the haunts of vice and iniquity which such men store up from the debaucheries in which they indulge and low characters with whom they associate, we ask that the Legislature take proper steps to enter into a full investigation of this subject, and, if the charges of drunkenness or other misdemeanors can be proven against said Charles A. Edmonds, that he be at once removed from the position of Commissioner of the State Land Office; and your petitioners will ever pray.

Lansing, March 19, 1872.

I. H. BARTHOLOMEW,	E. BEMENT,
R. C. DART,	B. F. SIMONS,
E. H. DAVIS,	H. INGERSOLL,
H. B. SHANK,	FRANK WELLS,
G. H. COLE,	T. R. CUSHING,
C. TRACY,	O. S. CASE,
E. B. MILLAR,	ABNER BROWN,
J. B. HULL,	A. T. DAVIS,
J. B. PORTER,	H. H. LARNED,
J. R. ESSELSTYN,	C. E. NASH.
JOHN ROBSON,	H. ELLIOT,
J. B. LEMLEY,	H. P. HITCHCOCK,
H. W. SQUIERS,	J. T. CONN.

Hosted by Google

Mr. Grosvenor, by unanimous consent, offered the following:

Resolved, That the petition and complaint of I. H. Bartholomew, R. C. Dart, and twenty-four others, citizens of the city of Lansing, against Chas. A. Edmonds, the Commissioner of the State Land Office, be and the same is hereby referred to a select committee of three, with instructions to inquire into the probable truth or falsity of the complaint, and report thereon to this House with all convenient speed the result of their deliberations, and whether the said Charles A. Edmonds ought to be impeached by this House, to the end that he may be removed from the office of Commissioner of the State Land Office; and if in their opinion the complaint is well founded, that they report to this House, in form, charges and specifications thereon, with the view of a trial before the Senate, as contemplated by Article 12, sections 1, 2, and 3 of the constitution of this State; and for the purpose of such inquiry and information, such committee is hereby authorized and empowered to send for persons and papers, and examine witnesses touching the matter of such complaint.

Mr. Fenton moved to amend the resolution by making the committee five instead of three;

Which was accepted.

Mr. Huston offered the following as a substitute to the resolution:

Whereas, It is claimed and reported that the Hon. Charles A. Edmonds, Commissioner of the State Land Office, has been guilty of corrupt conduct in his office as such Commissioner, and has also been guilty of high crimes and misdemeanors;

And whereas, The dignity and honor of the State imperatively demand and require honesty, faithfulness, and good moral character in all of its public servants;

And whereas, The power to impeach any civil officer of this State is vested by the Constitution of said State in the House of Representatives; therefore

Resolved, That a committee of five be appointed to investi-

Hosted by Google

gate the manner in which said Commissioner has conducted his said office, and whether he has been guilty of any offense or offenses that are impeachable, and that said committee have power to send for persons and papers, and to examine witnesses on oath, and that they report to this House with all convenient speed, by resolution or otherwise;

Which was not adopted.

The resolution offered by Mr. Grosvenor was then adopted.

The Speaker announced the appointment of Messrs. Grosvenor, Oscar Adams, Benjamin W. Huston, Jr., Charles B. Millington, and John J. Adam as the special committee to investigate the charges against Charles A. Edmonds, Commissioner of the State Land Office.

Lansing, Wednesday, March 27, 1872.

The select committee of the House of Representatives, appointed to consider the petition and complaint as to the conduct of Charles A. Edmonds, Commissioner of the State Land Office, submitted the following report:

The select committee to whom was referred the memorial of I. H. Bartholomew, R. C. Dart, E. H. Davis, H. B. Shank, G. H. Cole, C. Tracy, E. B. Millar, J. B. Hull, J. B. Porter, J. R. Esselstyn, John Robson, J. B. Lemley, H. W. Squiers, E. Bement, B. F. Simons, H. Ingersoll, Frank Wells, T. R. Cushing, O. S. Case, Abner Brown, A. T. Davis, H. H. Larned, C. E. Nash, H. Elliott, H. P. Hitchcock, and J. F. Conn, making complaint and preferring charges against Charles A. Edmonds, Commissioner of the State Land Office, and asking his removal from office for cause, have, in the discharge of this unwelcome duty, examined various witnesses, on oath, touching the several charges preferred against this public officer. During the taking of the testimony we regret that the absence of Charles A.

Hosted by Google

Edmonds from the city prevented our calling him before us to hear the proofs.

Before entering into the details of this report, we beg leave to call your attention to the previous good reputation and character which the Hon. Charles A. Edmonds has borne in the community. When we remember the patriotism and zeal shown by him in the cause of his country, his gallant and valuable services in the field, his unflinching fidelity in the cause of freedom, we approached this inquiry with the belief that he would appear to be the victim of a conspiracy. While we consider the charge and proofs of drunkenness, disconnected with any other act, as too trivial to call for the candid consideration of your committee; yet, when taken with the facts, as shown in the evidence, that in company with certain of his favorite clerks, he would, in a public manner, engage with them in drinking, carousing, and visiting places of disrepute, to the extent that the attention of the respectable portion of the community was called to him, it seems such an outrage upon the dignity of his official position, as to call for something more than a passing notice. The proof discloses that with some of his clerks, during his official term, he would engage in vile, dissolute, and adulterous conduct, and that in the day-time, and in business hours, and on one occasion, he in company with a confidential clerk, who, too, was a married man, has been known to engage not only in adulterous conduct, but to show such a disregard for some of the common decencies and proprieties of life, as to induce your committee to believe that the proofs would well sustain the charge of not only adultery, but of lascivious behavior.

While there was no positive proof showing his complicity with the authorship of the scandalous anonymous sheet, called *Every Wednesday Night*, so freely circulated in this House and community, there are sufficient facts and circumstances in proof, and to the knowledge of your committee, to warrant the conclusion that he had knowledge of and was

Hosted by Google

engaged in this disreputable affair, if not the guilty author thereof; and if he be so, he has violated the laws of this State and of the United States, against publishing and circulating obscene, defamatory, and demoralizing matter, and is unworthy the confidence which his official position demands.

Aside from his moral character, involved in the foregoing, we have investigated the business of his office, and the transactions of himself and clerks therein, as fully and thoroughly as the limited time allotted to your committee would seem to allow; and we find that he, with his clerks, or some of them, particularly with his Deputy, William A. Barnard, and his clerks, Clark, Dunham, Robinson, Knight, Bowen, and Griswold, have from time to time, during his official term, been engaged and interested in private speculations connected with the purchase and sale of lands and "scrip," so called, resulting to their pecuniary benefit in large sums of money. To allow those salaried officers to avail themselves of the advantages of the peculiar knowledge incident to their position, to the inconvenience and damage of outside parties, we think is a violation of the spirit and intent of the law in that regard. While these practices are defended by these officials as being justifiable under the law, yet we are of opinion that they should not be allowed; and, as hereinafter delineated, tend to destroy the confidence of the people in regard to the integrity and good faith of the office, tempting these officers to engage in speculations, which, though they may not thereby deplete the public treasury, yet are, in the opinion of your committee, detrimental to the best interests of the people at large, destructive to the valuable rights of the pioneer settlers, and calculated to injure and oppress a large class of our citizens who have the right of protection in this regard.

We find from the proofs that the Commissioner and his Deputy have from time to time, during his official term, speculated in the purchase and sale of "scrip" in his office, under the particular management and account of his chief clerk, and

Hosted by Google

in the people's time, to a large amount, realizing therefor a profit to himself and Deputy, since the first of June last, the sum of $8,384.14, as appears by a book kept in the office, being at the rate of about $10,303 per annum.

It is not strange, with such an example in the responsible head of the department, that those in inferior positions in the office should feel authorized to violate the express letter of the statutes, and engage directly or indirectly in the purchase and sale of State lands in the office, in direct violation of the statute 1861, forbidding any officer or clerk employed in the State Land Office to engage directly or indirectly in the purchase of lands from the State, or to be interested therein.

Some of these clerks have been in the habit of selling information (as they call it), within their peculiar official knowledge, to outside friends, and in some instances acting as agents for the purchase and sale of such lands for favorite friends, and in other instances used the name of a friend in making purchases which inured to their own benefit, making this a cover to evade the law. Lots have also been marked and held from market for months, for their particular benefit. Several instances of this kind, in proof, and to the knowledge of your committee, have occasioned serious loss and damage to honest settlers, inuring to the benefit and advantage of the land speculators and salaried officers. Your committee do not hesitate to condemn this practice as a violation of the law, and calculated to destroy the confidence of the people in the integrity and good faith of the Land Office.

In view of the wholesome provisions of the Constitution and statute requirements of this State as to the conduct and character of its officers, for protecting and insuring just and equal rights to every citizen; and considering that the Land Department particularly demands the highest order of integrity in its officials, vested as they are with the valuable information of the office; and in consequence of the evidence collected under the power with which your committee has been

Hosted by Google

invested by this House, and which is hereto subjoined, they are of the opinion that Charles A. Edmonds, the responsible head of the department, has forfeited all the right to fill the honorable trust and position of the Commissioner of the State Land Office, and that he should be impeached for corruption in office, and for crimes and misdemeanors against the laws of this State.

And your committee, in conclusion, unanimously recommend the adoption of the following resolution:

Resolved, That Charles A. Edmonds, Commissioner of the State Land Office, be impeached for misconduct in office, and for crimes and misdemeanors.

I. R. GROSVENOR,
B. W. HUSTON, JR.,
OSCAR ADAMS,
C. R. MILLINGTON,
JOHN J. ADAM.

The committee also submitted with their report a communication from Hon. Chas. A. Edmonds, Commissioner of the State Land Office.

On motion of Mr. Adams,

The report of the committee was laid on the table, and the communication of Mr. Edmonds was ordered printed in the journal.

The following is the communication:

To Hon. I. R. Grosvenor, and to the Committee of Investigation of which you are Chairman:

GENTLEMEN—Availing myself of the offer you generously gave me last evening, to hand in any request I wished to make as to your report, I have to say that the charges against my private character, as well as those against my official conduct as the Commissioner of the State Land Office, brought to the notice of the Legislature through the papers and by public rumor, are untrue. In behalf of the Legislature, your investigation is a proper one, and I not only submit to it, but invite

Hosted by Google

it. As a public officer, I am amenable to your tribunal. If you find the shadow of ground for impeaching me, I beg of you to arraign me at the bar of the Senate, to be either justly punished or honorably acquitted.

But your investigations, like that of a grand jury, are necessarily *ex parte,* and while my personal enemies and all witnesses *against* me can be admitted to testify, rebutting testimony on my part would be necessarily excluded.

I therefore ask you that, while you do your duty to the State, you also deal fairly with me as a man, and either give me the impartial tribunal of the Senate for a trial, or the courts of law, where I can meet my traducers on a fair field. Do not give official sanction by your report to rumors and scandal which are as yet untried.

March 27, 1872.

Very respectfully,

CHAS. A. EDMONDS.

Mr. Huston moved that the subject of the investigation of the case of Hon. Charles A. Edmonds, Commissioner of the State Land Office, be made the special order for to-morrow morning at 9 o'clock, and that the sitting be with closed doors.

Mr. J. Haynes moved to amend the motion so as to make the hour 7½ o'clock this evening;

Which was accepted.

The motion, as amended, was then agreed to.

At the evening session, Mr. Millington moved that the Hon. Charles A. Edmonds, Commissioner of the State Land Office, be invited to take a seat within the bar of this House during the reading of the testimony, if he desires.

Mr. Swineford, by unanimous consent, offered the following:

Resolved, That the reporters for the daily papers be admitted to their usual places during the present session of this House;

Which was adopted.

The House went into session with closed doors, in consider-

Hosted by Google

ation of the case of Hon. Charles A. Edmonds, Commissioner of the State Land Office.

After some time spent therein,

On motion of Mr. Fenton,

The House adjourned until to-morrow morning at 9 o'clock.

Lansing, Thursday, March 28, 1872.

At the morning session, on motion of Mr. Brockway,

The House took up the special order, being the consideration of the case of Hon. Charles A. Edmonds, Commissioner of the State Land Office, which was conducted with closed doors.

After some time spent in the consideration of the case,

On motion of Mr. J. Haynes,

The order for closing the doors during the further consideration of the case was rescinded.

At the afternoon session, on motion of Mr. Brockway,

The House took up the special order, being the consideration of the case of the Hon. Charles A. Edmonds, Commissioner of the State Land Office.

Mr. Brockway moved to take from the table the report of the committee recommending the adoption of the following resolution:

Resolved, That Charles A. Edmonds, Commissioner of the State Land Office, be impeached for corrupt conduct in office, and for crimes and misdemeanors;

Which motion prevailed.

The question being on the adoption of the resolution,

Pending which,

Mr. Grosvenor moved that there be a call of the House;

Which motion prevailed.

The roll of the House was called by the Clerk, and the fol-

Hosted by Google

lowing members reported absent without leave: Messrs. Holt, W. H. C. Mitchell, Montgomery, J. M. Osborn, and Smith.

Mr. Atwood asked and obtained leave of absence for Mr. Montgomery, on account of sickness.

On motion of Mr. Post,

All further proceedings under the call were dispensed with.

The question recurring on the adoption of the resolution,

Mr. Grosvenor demanded the yeas and nays.

The demand was seconded, and the resolution was adopted, by yeas and nays, as follows:

YEAS.

Mr. Adam,	Mr. Gillam,	Mr. R. C. Miller,
Adams,	C. B. Grant,	Millington,
Adsit,	Gorman,	P. Mitchell,
Andrews,	Green,	W.H.C.Mitchell,
Atwood,	Greusel,	Moshier,
Barnaby,	Grosvenor,	Norris,
Brockway,	Haack,	C. Y. Osburn,
Brown,	Harris,	Pattengell,
Chamberlain,	Hart,	Pearl,
Cherry,	H. Haynes,	Pierson,
Childs,	J. Haynes,	Post,
Clement,	Hazen,	Priest,
Climie,	N. R. Hill,	Riford,
Cochrane,	S. W. Hill,	Rood,
Congdon,	Hodge,	Roof,
Copley,	Holland,	Roost,
Coulter,	Huff,	Runyan,
Crane,	Hughes,	Sumner,
Crofoot,	Huston,	Swineford,
Dalton,	Kellogg,	F. Walker,
Edwards,	Knapp,	J. Walker,
Fenton,	Lamb,	Walton,
Ferris,	Little,	Webster,
Ferry,	Marston,	Wells,
Frost,	E. R. Miller,	Williams,
Garrison,	N. L. Miller,	Speaker,
Gibson,		79

NAYS.

Mr. Cameron,	Mr. Hoyt,	Mr. Van Scoy,
Doty,	Hurlbut,	5

Hosted by Google

Mr. Grosvenor, by unanimous consent, offered the following:

Resolved, That ——, ——, and —— be a committee to go to the Senate, and at the bar thereof, in the name of the House of Representatives and of the people of the State of Michigan, impeach Charles A. Edmonds, Commissioner of the State Land Office, for corrupt conduct in office and for crimes and misdemeanors; and acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, through its managers to be elected, and make good the same, and demand that the Senate take order for the appearance of the said Charles A. Edmonds in due time to answer said impeachment.

Mr. Hart moved that the Speaker be authorized to fill the blank in the resolution with the names of three members of the House;

Which motion prevailed.

The Speaker announced Messrs. Grosvenor, W. H. C. Mitchell, and Childs as the names to be put in the blank in the resolution.

The resolution was then adopted.

On motion of Mr. Brockway,

The House proceeded to the election of three managers, to prosecute the impeachment of Hon. Charles A. Edmonds, Commissioner of the State Land Office, before the Senate.

On motion of Mr. Millington,

The managers were elected by ballot.

The House proceeded to ballot, and elected the following managers in the order named: Ira R. Grosvenor, Benjamin W. Huston, Jr., and Lyman Cochrane.

At the evening session, the committee appointed by the House to impeach Charles A. Edmonds, Commissioner of the State Land Office, at the bar of the Senate, made the following report:

Mr. Speaker—In obedience to the order of the House, we have, in the name of the House of Representatives and of the

Hosted by Google

people of the State of Michigan, at the bar of the Senate, impeached Charles A. Edmonds, Commissioner of the State Land Office, for corrupt conduct in office and for crimes and misdemeanors; and informed the Senate that the House would, in due time, through its managers, exhibit particular articles of impeachment against him, and would make good the same, and demanded, in the name of the House, that the Senate take order for the appearance of said Charles A. Edmonds to answer the same, and received answer that the Senate would take due action.

Report accepted and committee discharged.

Mr. Huston, by unanimous consent, offered the following:

Resolved, That the Clerk be and he is hereby directed to deliver the testimony taken by the Edmonds investigating committee, to the managers appointed to try the impeachment against said Edmonds;

Which was adopted.

Hosted by Google

PRELIMINARY PROCEEDINGS IN THE SENATE.

Lansing, Thursday, March 28, 1872.

At the evening session, the Sergeant-at-Arms announced a committee from the House of Representatives, Messrs. I. R. Grosvenor, W. H. C. Mitchell, and Aaron Childs, who appeared at the bar of the Senate and delivered the following message:

MR. PRESIDENT—In obedience to the order of the House of Representatives, we appear before you, and *in the name of the House of Representatives and of the People of the State of Michigan,* we do impeach Charles A. Edmonds, Commissioner of the State Land Office, for corrupt conduct in office, and for crimes and misdemeanors; and we further inform the Senate, that the House of Representatives will in due time exhibit particular articles of impeachment against him, and will make good the same; and in their name we demand that the Senate take order for the appearance of said Charles A. Edmonds, to answer the same.

The President replied that the Senate would take order in the premises, and the committee withdrew.

Mr. Ball offered the following resolution, which was adopted:

Resolved, That the message of the House relating to the impeachment of Charles A. Edmonds be referred to a select committee of three, to be appointed by the Chair, to consider and report thereon.

The President announced as such committee, Senators Ball, Emerson, and Wheeler.

Hosted by Google

Lansing, March 29, 1872.

The select committee appointed to consider and report concerning the impeachment of Hon. Charles A. Edmonds, submitted the following resolutions:

Whereas, The House of Representatives, on the 28th day of the present month, by three of its members, Messrs. I. R. Grosvenor, W. H. C. Mitchell, and Aaron Childs, at the bar of the Senate, impeached Charles A. Edmonds, Commissioner of the State Land Office, for corrupt conduct in office and for crimes and misdemeanors, and informed the Senate that the House of Representatives, by their Managers, will in due time exhibit particular articles of impeachment against him and make good the same, and likewise demanded that the Senate take order for the appearance of said Charles A. Edmonds to answer to the said impeachment;

Resolved, That the Senate will take proper order thereon and proceed to the trial of such impeachment in the manner provided by law.

Resolved, That the Secretary of the Senate give the House of Representatives due notice of these resolutions;

And recommend their adoption.

BYRON D. BALL, *Chairman.*

Report accepted and committee discharged.

The resolutions were adopted.

Hosted by Google

THE LAW OF IMPEACHMENT.

During the session of the Senate on Thursday, March 28th, the following message was received from the Governor:

EXECUTIVE OFFICE,
Lansing, March 28, 1872.

To the Legislature:

The Constitution has conferred upon the House of Representatives the power of impeaching civil officers for corrupt conduct in office, or for crimes or misdemeanors. It also provides for the election by the House of three of its members to prosecute such impeachment, and that every impeachment shall be tried by the Senate, but not until the final adjournment of the Legislature.

Having received official notice of the impeachment of a State officer, it becomes my duty to call your attention to the fact that no law exists in this State, under which the trial may proceed.

It is with feelings of the deepest sorrow—but the necessity exists—that I recommend the passage of an act to confer upon the Senate and other officers the requisite power to proceed in cases of this kind.

Although this comes before you at a very late period of the session, just at the time when you are expecting to return to your homes and your families, I am quite sure you will not hesitate to remain as long as may be necessary to give the most careful consideration to this important subject, so as to protect the good name of the State, and at the same time carefully guard the rights of the impeached officer.

The compensation of the members of the Senate and other

Hosted by Google

officers, when convened for this purpose, should be fixed, and provision made for the payment of the members, officers, and contingent expenses.

HENRY P. BALDWIN.

The message was laid on the table.

The same message was communicated to the House of Representatives the next day.

On Friday, March 29th, in the House of Representatives,

Mr. Holt, unanimous consent being given, introduced

A bill regulating trials of impeachment, and providing for the expenses thereof.

The bill was read a first and second time by its title, and,

On motion of Mr. Holt,

The rule requiring the second and third reading of bills to be on different days was suspended, and the bill was put upon its immediate passage.

The bill having been read a third time, and the question being upon its passage, pending the taking of the vote thereon,

Mr. Holt moved to amend the bill by striking out in the first section the word "shall," after the word "impeach," and insert "may by the Governor," in lieu thereof;

Which motion prevailed.

The bill was then passed, a majority of all the members elect voting therefor, by yeas and nays, as follows:

YEAS.

Mr. Adam,	Mr. Gorman,	Mr. Millington,
Adams,	Green,	P. Mitchell,
Adsit,	Greusel,	W.H.C.Mitchell,
Andrews,	Grosvenor,	Montgomery,
Atwood,	Haack,	Moshier,
Barnaby,	Harris,	Norris,
Brown,	Hart,	C. Y. Osburn,
Cameron,	H. Haynes,	Pattengell,
Cherry,	J. Haynes,	Pearl,
Childs,	Hazen,	Pierson,
Clement,	N. R. Hill,	Priest,
Climie,	S. W. Hill,	Rood,
Cochrane,	Hodge,	Roof,

Hosted by Google

Mr. Copley,	Mr. Holland,	Mr. Roost,	
Coulter,	Holt,	Runyan,	
Crane,	Hoyt,	Smith,	
Crofoot,	Huff,	Sumner,	
Dalton,	Hughes,	Swineford,	
Fenton,	Huston,	F. Walker,	
Ferris,	Kellogg,	J. Walker,	
Ferry,	Knapp,	Walton,	
Frost,	Lamb,	Webster,	
Garrison,	Little,	Wells,	
Gibson,	E. R. Miller,	Williams,	
Gillam,	N. L. Miller,	Speaker,	
C. B. Grant,	R. C. Miller,		78

NAYS.

Mr. Hurlbut,	Mr. Riford,	Mr. White,	
Post,	Van Scoy,		5

Title agreed to.

On motion of Mr. Holt,

By a vote of two-thirds of all the members elect, the bill was ordered to take immediate effect.

In the Senate, on Friday, March 29th, the following message was received:

HOUSE OF REPRESENTATIVES,
Lansing, March 29, 1872.

To the President of the Senate:

SIR—I am instructed by the House to transmit the following bill:

House manuscript bill, entitled

A bill regulating trials of impeachment and providing for the expenses thereof;

Which has passed the House by a majority vote of all the members elect, and by a vote of two-thirds of all the members elect been ordered to take immediate effect, and in which the concurrence of the Senate is respectfully asked.

Very respectfully,

N. B. JONES,

Clerk of the House of Representatives.

The bill was read a first and second time by its title, and,

On motion of Mr. Romeyn,

Hosted by Google

The rules were suspended, and the bill was put upon its immediate passage.

The bill was read a third time and passed, a majority of all the Senators elect voting therefor, by yeas and nays, as follows:

YEAS.

Mr. Alexander,	Mr. Gay,	Mr. Romeyn,	
Ball,	Hannahs,	Sheley,	
Barber,	Jenks,	Stockbridge,	
Begole,	Mann,	Storrs,	
Brownell,	Neasmith,	Waterbury,	
Cawley,	Price,	Wheeler,	
Cravath,	Prutzman,	White,	
Dexter,	Putnam,	Wilcox,	
Emerson,	Randall,	Wood,	27

NAYS.

Mr. Briggs, 1

Title agreed to.

On motion of Mr. Romeyn,

By a vote of two-thirds of all the Senators elect, the bill was ordered to take immediate effect.

The act is as follows:

AN ACT regulating trials of impeachment and providing for the expenses thereof.

SECTION 1. *The People of the State of Michigan enact,* That the House of Representatives shall have the sole power of impeaching civil officers for corrupt conduct in office, or for crimes and misdemeanors, but a majority of the members elected shall be necessary to direct an impeachment. Every officer impeached may by the Governor be suspended in the exercise of his office until his acquittal, and the Governor may make a provisional appointment to a vacancy occasioned by the suspension of an officer, until he shall be acquitted, or until after the election and qualification of a successor.

Sec. 2. Every impeachment shall be tried by the Senate. When the Governor or Lieutenant Governor is tried, the Chief Justice of the Supreme Court shall preside. When an impeachment is directed, the Senate shall take an oath or

Hosted by Google

affirmation truly and impartially to try and determine the same according to the evidence. No person shall be convicted without the concurrence of two-thirds of the members elected. Judgment, in case of impeachment, shall not extend further than removal from office, but the party convicted shall be liable to punishment according to law.

Sec. 3. When an impeachment is directed, the House of Representatives shall elect from their own body three members, whose duty it shall be to prosecute such impeachment; and the House of Representatives are hereby authorized to empower the said managers to prepare and present articles of impeachment in accordance with the resolutions of said House.

Sec. 4. Whenever an impeachment is directed, the Senate shall forthwith, after the hour of final adjournment of the Legislature, be organized into a court for the trial of the same, at the State Capital, and such organization shall be deemed to be perfected when the presiding officer of the Senate and all the members thereof, present, shall have taken the oath or affirmation hereinbefore prescribed; and no member of the court shall sit, or give his vote upon such trial, until he shall have taken such oath or affirmation, which oath or affirmation shall be administered by the Secretary of the Senate to the presiding officer thereof, and by the presiding officer to each of the members of the Senate. The Senate, sitting upon the trial of an impeachment, shall have the same power to compel the attendance of its members, as when engaged in the ordinary business of legislation.

Sec. 5. The Senate, when so organized, shall forthwith cause the person impeached to appear, and to answer the charge exhibited against him; and upon his appearance, he shall be entitled to a copy of the articles of impeachment, and to a reasonable time to answer the same.

Sec. 6. The person accused shall be allowed counsel on the trial of the impeachment.

Sec. 7. When issue shall be joined in an impeachment, the

Hosted by Google

Senate, sitting as a court for the trial of the same, shall appoint a time and place for the trial thereof. At the time and place so appointed, the Senate, as a court, shall proceed to hear, try, and determine the impeachment, and may from time to time, if necessary, adjourn the trial to any other time or place at the State capital.

Sec. 8. If two-thirds of all the members elected to the Senate shall not assent to a conviction, the person impeached shall be declared acquitted.

Sec. 9. If the President of the Senate shall be impeached, notice thereof shall be immediately given to the Senate by the House of Representatives, that another President may be chosen.

Sec. 10. The writs and process of the Senate, sitting as a court for the trial of an impeachment, shall be signed by the Secretary of the Senate, and *tested* in the name of the presiding officer, and the Senate, as such court, shall have power to enforce obedience to its process by attachment and punishment, as for contempt of the process of a court of record.

Sec. 11. It shall be the duty of the Secretary of the Senate, in all cases of impeachment, to keep a full and accurate record of the proceedings, which shall be taken and held as a public record; and he shall have power to administer all requisite oaths or affirmations.

Sec. 12. The Senate, sitting as a court of impeachment, shall have power from time to time to appoint such subordinate officers or clerks and reporters as may be necessary for the convenient transaction of business, and at any time to remove such officers.

Sec. 13. The managers elected by the House of Representatives shall have all necessary powers for conducting the trial of impeachments before the Senate, and they, and also the person impeached, shall severally be entitled to process for compelling the attendance of persons, or the production of papers and records, required for the trial of the impeachment.

Hosted by Google

Sec. 14. The Senate, sitting as a court of impeachment, shall have full power and authority to establish such rules and regulations as may be necessary in the trials of impeachment.

Sec. 15. The presiding officer and members of the Senate, while sitting as a court of impeachment, and the managers elected by the House, shall receive the sum of five dollars each per day, and mileage at the rate of ten cents per mile in going from and returning to their places of residence by the ordinarily traveled routes; and the compensation of the Secretary, Sergeant-at-Arms, and all subordinate officers, clerks, and reporters, shall be such an amount as shall be fixed by the vote of the members of such court. The State Treasurer shall, upon presentation of a certificate or certificates signed by the presiding officer and Secretary of the Senate, and countersigned by the Auditor General, pay all the expenses of the Senate and managers elected by the House, which may be incurred under the provisions of this act.

Sec. 16. The provisions of this act shall apply to all resolutions and proceedings heretofore had, or hereafter to be had, to impeach any civil officer of this State.

Sec. 17. This act shall take immediate effect.

Approved March 30, 1872.

The following bill was also passed by both branches of the Legislature, March 29th:

AN ACT to provide for the payment of the expenses of the trial of the impeachment of Charles A. Edmonds, Commissioner of the State Land Office.

SECTION 1. *The People of the State of Michigan enact,* That there be and hereby is appropriated out of any money in the credit of the general fund, such a sum as may be necessary for the payment of officers and members of the Senate, the managers of the trial of the impeachment of Charles A. Edmonds, Commissioner of the State Land Office, during said trial, and the incidental expenses attending said trial.

Sec. 2. This act shall take immediate effect.

Approved March 29, 1872.

Hosted by Google

COURT OF IMPEACHMENT RULES.

The following were adopted as the rules of procedure and practice in the Senate, when sitting on the trial of impeachments:

I. When the managers of an impeachment shall be introduced at the bar of the Senate, and shall signify that they are ready to exhibit articles of impeachment against any person, the presiding officer shall direct the Sergeant-at-Arms to make proclamation, who shall, after making proclamation, repeat the following words, viz: "All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the State of Michigan, articles of impeachment against ———," after which the articles shall be exhibited, and then the presiding officer of the Senate shall inform the managers that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to them.

II. Upon such articles being presented to the Senate, the Senate shall forthwith proceed to the consideration of such articles, and shall continue in session from day to day (Sundays excepted) after the trial shall commence (unless otherwise ordered by the Senate), until final judgment shall be rendered.

III. The presiding officer shall have power to make and issue, by himself or by the Secretary of the Senate, all orders, mandates, writs, and precepts, authorized by law or by the rules or by the Senate, and to make and enforce such other regulations and orders in the premises as the Senate may authorize or provide.

IV. The Senate shall have power to compel the attendance

Hosted by Google

of witnesses, to enforce obedience to its orders, mandates, writs, precepts, and judgments; to preserve order, and to punish in a summary way contempts of, and disobedience to its authority, orders, mandates, writs, precepts, or judgments; and to make all lawful orders, rules, and regulations, which it may deem essential or conducive to the ends of justice. And the Sergeant-at Arms, under the direction of the Senate, may employ such aid and assistance as may be necessary to enforce, execute, and carry into effect the lawful orders, mandates, writs, and precepts of the Senate.

V. The presiding officer of the Senate shall direct all necessary preparations in the Senate chamber, or other place where the trial may be held; and the presiding officer, upon the trial, shall direct all the forms of proceeding, while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. The presiding officer may rule all questions of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless some member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may, at his option, in the first instance, submit any such question to a vote of the members of the Senate.

VI. Upon presentation of articles of impeachment, a writ of summons shall issue to the accused, reciting said articles, and notifying him to appear before the Senate forthwith, and file his answer to said articles of impeachment, and to stand to and abide the orders and judgments of the Senate thereon; which writs shall be served by such officers or persons as shall be named in the precept thereof, either by the delivery of an attested copy thereof to the person accused, or, if that cannot conveniently be done, by leaving such copy at the last known place of abode of such person, or at his usual place of business, in some conspicuous place therein, or if such service shall be, in the judgment of the Senate, impracticable, notice to the

Hosted by Google

accused to appear shall be given in such other manner, by publication or otherwise, as shall be deemed just; and if the writ aforesaid shall fail of service in the manner aforesaid, the proceedings shall not thereby abate, but further service may be made in such manner as the Senate shall direct. If the accused, after service, shall fail to appear, either in person or by attorney, or appearing, shall fail to file his answer to such articles of impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty. If a plea of guilty shall be entered, judgment may be entered thereon without further proceedings.

VII. On the return of the summons against the person impeached, the Secretary of the Senate shall administer an oath to the retiring officer in the following form, viz: "I, ——— ———, do solemnly swear that the return made by me upon the process issued on the ——— day of——————— by the Senate of the State of Michigan, against ——— ———, is truly made, and that I have performed such service as therein described. So help me God." Which oath shall be entered at large on the record.

VIII. The person impeached shall then be called to appear and answer the articles of impeachment against him. If he appear, or any person for him, the appearance shall be recorded, stating particularly if by himself, or by agent or attorney, naming the person appearing, and the capacity in which he appears. If he do not appear, either personally or by agent or attorney, the same shall be recorded.

IX. The hour of the day at which the Senate shall sit upon the trial of an impeachment shall be (unless otherwise ordered) ten o'clock in the forenoon; and when the hour for such sitting shall arrive, the presiding officer shall call the Senate to order, and shall direct the Sergeant-at-Arms to make proclamation, and the business of the trial shall proceed.

X. The Secretary of the Senate shall record the proceedings in cases of impeachment, and cause the same to be printed as in the case of legislative proceedings.

Hosted by Google

XI. Counsel for the parties shall be admitted to appear and be heard upon an impeachment.

XII. All motions made by the parties or their counsel shall be addressed to the presiding officer; and if he, or any Senator shall require, they shall be committed to writing, and read at the Secretary's table.

XIII. Witnesses shall be examined by one person on behalf of the party producing them, and then cross-examined by one person on the other side.

XIV. If a Senator is called as a witness, he shall be sworn and give his testimony standing in his place.

XV. If a Senator wishes a question to be put to a witness, or to offer a motion or order (except a motion to adjourn), it shall be reduced to writing, and put by the presiding officer.

XVI. At all times while the Senate is sitting upon the trial of an impeachment, the doors of the Senate shall be kept open, unless the Senate shall direct the doors to be closed while deliberating upon its decisions.

XVII. All preliminary or interlocutory questions, and all motions, may be argued for not exceeding thirty minutes on each side, unless the Senate, by order, extend the time.

XVIII. The case, on each side, shall be opened by one person. The final argument on the merits may be made by three persons on each side (unless otherwise ordered by the Senate upon application for that purpose), and the argument shall be opened and closed on the part of the House of Representatives.

XIX. On the final question whether the impeachment is sustained, the yeas and nays shall be taken on each article of impeachment separately; and if the impeachment shall not, upon any of the articles presented, be sustained by the votes of two-thirds of the members elected, a judgment of acquittal shall be entered; but if the person accused in such articles of impeachment shall be convicted upon any of said articles by the votes of two-thirds of the members elected, the Senate

Hosted by Google

shall proceed to pronounce judgment, and a certified copy of such judgment shall be deposited in the office of the Secretary of State.

XX. All the orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, and without debate, except when the doors shall be closed for deliberation, and in that case no members shall speak more than once on one question, and for not more than ten minutes on an interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate, but a motion to adjourn may be decided without the yeas and nays, unless demanded by some members.

XXI. Witness shall be sworn in the following form, namely: "You, —— ——, do swear (or affirm, as the case may be) that the evidence you shall give in the case now depending between the People of the State of Michigan and —— ——, shall be the truth, the whole truth, and nothing but the truth. So help you God." Which oath shall be administered by the Secretary.

Form of subpœna to be issued on the application of the managers of the impeachment, or of the party impeached, or of his counsel:

In the name of the People of the State of Michigan:

To——— ———, Greeting:

You, and each of you, are hereby commanded to appear before the Senate of the State of Michigan on the —— day of ———, at the Senate chamber, in the city of Lansing, then and there to testify your knowledge in the cause which is before the Senate, in which the House of Representatives have impeached ——— ———.

Fail not.

Witness, ——— ———, and presiding officer of the Senate, at the city of Lansing, this —— day of ———, in the year of our Lord ——.

Hosted by Google

Form of direction for the service of said subpœna:

The Senate of the State of Michigan to —— ——, Greeting:

You are hereby commanded to serve and return the within subpœna according to law.

Dated at Lansing this —— day of ———, A. D. 18—.

———— ————,

Secretary of the Senate.

Form of oath to be administered to the members of the Senate sitting in the trial of impeachments:

"I solemnly swear (or affirm, as the case may be) that in all things appertaining to the trial of the impeachment of ——— ———, now pending, I will truly and impartially try and determine the same according to the law and evidence. So help me God."

Form of summons to be issued and served upon the person impeached:

STATE OF MICHIGAN,
THE SENATE OF THE STATE OF MICHIGAN, } ss.

In the name of the People of the State of Michigan:

To ——— ———, Greeting:

Whereas, The House of Representatives of the State of Michigan did, on the ——— day of ———, exhibit to the Senate articles of impeachment against you, the said ———, in the words following:

[Here insert the articles.]

And demand that you, the said ——— ———, shall be put to answer the accusations as set forth in said articles, and that such proceedings, examinations, trials, and judgments might be thereupon had as are agreeable to law and justice, you the said ——— ———, are therefore hereby summoned forthwith to be and appear before the Senate of the State of Michigan, at their Chamber in the city of Lansing, then and there to answer to the said articles of impeachment, and then and there to abide by, obey, and perform such orders, directions, and judgments as the Senate of the State of Michigan shall

Hosted by Google

make in the premises, according to the Constitution and laws of the State of Michigan.

Hereof you are not to fail.

Witness, ——— ———, and presiding officer of the said Senate, at the city of Lansing, this ——— day of ———, in the year of our Lord ———.

Form of precept to be indorsed on said writ of summons:

STATE OF MICHIGAN, }
THE SENATE OF THE STATE OF MICHIGAN, } ss.

In the name of the People of the State of Michigan:

To ——— ———, Greeting:

You are hereby commanded to deliver to, and leave with ——— ———, if conveniently to be found, or, if not, to leave at his usual place of abode, or at his usual place of business, in some conspicuous place, a true and attested copy of the within writ of summons, together with a like copy of this precept.

Fail not, and make return of this writ of summons and precept, with your proceedings thereon indorsed.

Witness ——— ———, and presiding officer of the Senate, at the city of Lansing, this ——— day of ———, in the year of our Lord ———.

All process shall be served by the Sergeant-at-Arms of the Senate, unless otherwise ordered.

XXII. If the Senate shall, at any time, fail to sit for the consideration of articles of impeachment, on the day or hour fixed therefor, the Senate may, by an order to be adopted without debate, fix a day and hour for resuming such consideration.

Hosted by Google

Hosted by Google

THE TRIAL OF CHARLES A. EDMONDS,

COMMISSIONER OF THE STATE LAND OFFICE,

FOR CORRUPT CONDUCT IN OFFICE, AND CRIMES AND MISDEMEANORS.

THE STATE OF MICHIGAN *vs.* CHARLES A. EDMONDS,

COMMISSIONER OF THE STATE LAND OFFICE.

SENATE CHAMBER,
Thursday, April 11, 1872.

At 12 o'clock at noon the Senate adjourned without day, and immediately thereafter the Secretary administered the following oath to the President *pro tem.*, Mr. Emerson:

"I solemnly swear that in all things appertaining to the trial of the impeachment of Charles A. Edmonds, now pending, I will truly and impartially try and determine the same according to the law and the evidence. So help me God."

The President—Senators will step forward as their names are called and be sworn. The Secretary will call five at a time.

The following Senators came forward and took the oath: Senators Alexander, Ball, Barber, Begole, Briggs, Brownell, Cawley, Cravath, Dexter, Gay, Hannahs, Jenks, Mann, Moffatt, Price, Prutzman, Putnam, Randall, Romeyn, Sheley, Stoddard, Waterbury, Wheeler, and Wood.

Hosted by Google

The President—All the Senators present having been sworn, the Senate is now organized for the trial of the impeachment of Charles A. Edmonds.

Mr. Moffatt—I move that a committee of three be appointed by the Chair, to notify the managers appointed on behalf of the House of Representatives, that the Senate is now organized for the purpose of proceeding to the trial of the impeachment of Charles A. Edmonds;

The resolution was adopted.

The President—The Chair will appoint Senators Moffatt, Wheeler, and Romeyn, as such committee.

Mr. Cravath—I move that the rules adopted by the Senate for the procedure and practice of trials of impeachment, be adopted by the Senate sitting as a court for the trial of Charles A. Edmonds.

The President—The Senator will reduce his motion to writing.

The motion was reduced to writing and sent to the Chair.

Mr. Wheeler—I ask for the yeas and nays.

The resolution was agreed to, by yeas, 25; nays, 0.

Mr. Jenks—I move we now take a recess until 2 o'clock.

The motion was agreed to, and the President therefore declared the Senate, sitting for the trial of the impeachment, adjourned to the time named.

Thursday P. M., April 11, 1872.

The President entered the Senate Chamber and took the chair.

The President—The Secretary will call the roll.

The Secretary called the roll, twenty-six Senators answering to their names.

Mr. Neasmith came forward and took the oath.

Hosted by Google

Mr. Price—I send to the Chair a letter written by Senator Morton in explanation of his absence, which I desire to present to the Senate.

The Secretary read the letter.

Mr. Price—Mr. President, I move that indefinite leave of absence be granted to Senator Morton;

The motion was agreed to.

Mr. Moffatt—Mr. President, the committee appointed to wait upon the managers appointed on behalf of the House of Representatives, and inform them that the Senate is organized and is ready to proceed to the trial of the impeachment of Charles A. Edmonds, respectfully report that they have performed that duty, and the managers notified them that they are ready to appear at the bar of the Senate and present articles of impeachment.

Mr. Alexander—I will inquire how many Senators are sworn in.

The President—The Secretary informs me there are twenty-six.

The Sergeant-at-Arms—Mr. President, the managers of the impeachment, appointed on the part of the House of Representatives, are at the bar of the Senate.

The President—Admit them within the bar, and conduct them to the seats prepared for them.

The Sergeant-at-Arms conducted the managers to seats within the bar.

Managers: Hon. I. R. Grosvenor of Monroe, Hon. B. W. Huston, Jr. of Tuscola, Hon. Lyman I. Cochrane of Wayne.

Mr. Manager Grosvenor—Mr. President, in obedience to the instruction of the House of Representatives, as their managers, we are now prepared to exhibit particular articles of impeachment against Charles A. Edmonds, Commissioner of the State Land Office, for corrupt conduct in office, and for crimes and misdemeanors.

The President—The Sergeant-at-Arms will make proclamation.

Hosted by Google

The Sergeant-at-Arms—Hear ye! hear ye! hear ye! All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives exhibit to the Senate articles of impeachment against Charles A. Edmonds.

Mr. Manager Grosvenor then read the articles of impeachment, as follows:

ARTICLES exhibited on behalf of the House of Representatives of the State of Michigan, and in the name of the People of the State of Michigan, against Charles A. Edmonds, Commissioner of the State Land Office, in maintenance and support of their impeachment against him for corrupt conduct in office, and for crimes and misdemeanors.

ARTICLE I.

That said Charles A. Edmonds, Commissioner of the Land Office of the State of Michigan, on the fourth day of January, 1871, and on divers other days and times, between that day and the time when said House of Representatives passed the resolution of impeachment against him, to wit: the 28th day of March, 1872, unmindful of the high duties of his office, of his oath of office, and of the requirements of the constitution and the laws of this State, did corruptly, unlawfully, and in violation of the constitution and laws of this State, withhold from sale divers large tracts of land for the particular benefit and advantage of certain land dealers, and for a private pecuniary consideration to himself, his deputy and clerks, to the damage and inconvenience of the actual settlers, other dealers, and the people of the State generally; and the said Charles A. Edmonds, Commissioner of the State Land Office, was in this manner then and there guilty of corrupt conduct in office, and did commit a misdemeanor in office.

ARTICLE II.

That said Charles A. Edmonds, Commissioner of said State Land Office, on divers days and times, between the time of assuming the duties of his office, to-wit: about the fourth day of January, 1871, and the day of the passage of the said reso-

Hosted by Google

lution of impeachment, the basis of these articles, unmindful of the high duties of his office, of his oath of office, and in violation of the constitution and laws of the State of Michigan, and contrary to the provisions of an act entitled "An act to prevent officers and clerks in the State Land Office, and in Auditor General's Office, from purchasing lands while in the employ of the State," approved March 16, 1861, did corruptly, unlawfully, by himself, and with his deputy, and also with his clerks in said office, directly and indirectly engage in the purchase of lands from the State, and for sale in the Land Office of this State, of which he was chief.

And the said Charles A. Edmonds, Commissioner of the State Land Office, was thus, then, and there guilty of corrupt conduct in office, and did commit a high misdemeanor in office.

ARTICLE III.

That said Charles A. Edmonds, Commissioner of said State Land Office, unmindful of the duties of his office, and his oath of office, having knowledge that large numbers of actual settlers to whom licenses had been issued in pursuance of act No. 108, session laws of 1861, being an act entitled "An act to amend an act entitled 'An act to provide for the settlement and drainage of the swamp lands by actual settlers, being act No. 229, laws of 1859,'" were in possession of their lands under their said licenses, and had been in possession thereof for a long time, and made valuable improvements thereon, and complied with the laws of this State in regard to licensing lands to actual settlers fully, except filing with the Commissioner of the Land Office the proofs of settlement and occupancy, required by section four of said act No. 108, laws of 1861, and he, the said Edmonds, being acquainted with the practice in said office ever since the passage of said act No. 108, laws of 1861, to withhold from sale such licensed lands, except in cases where proofs by the affidavit of two credible

Hosted by Google

witnesses was filed, showing non-settlement and abandonment by the licensee, did corruptly, and for the purpose of pecuniary gain to himself, his deputy and clerks, about the month of October, 1871, decide that such lands were subject to sale without such proof of non-settlement or abandonment, as had been the practice of said office, and he, the said Charles A. Edmonds, did then and there, by himself, his deputy, and clerks, corruptly, and for the purpose of securing gain as aforesaid, furnish to divers persons the description of such licensed lands, when the proofs of settlement and occupancy had not been filed in accordance with said section four aforesaid, which said persons purchased said lands, and to whom said Commissioner issued patents, whereby a gross fraud was practiced upon such actual settlers, and large profits and gains made, in which said Edmonds, his deputy, and clerks, were interested.

And said Edmonds, being so unmindful of his duty and oath of office, and the policy of the State to protect the actual settlers, has corruptly furnished and permitted his deputy and clerks corruptly to furnish such descriptions of licensed lands to divers persons, on divers days and times, since the decision aforesaid, and before the passage of the resolution of impeachment by the House of Representatives, which said persons purchased said descriptions, to whom patents were issued by said Commissioner, he, said Commissioner, his deputy, and clerks being indirectly interested therein.

And the said Charles A. Edmonds, Commissioner of the State Land Office, was thus, then, and there guilty of corrupt conduct in office, and did commit a misdemeanor in office.

ARTICLE IV.

That said Charles A. Edmonds, Commissioner of the State Land Office, unmindful of the high and responsible duties of his office, and of his oath of office, on the first day of June, 1871, in the said Land Office, at Lansing, in the county of

Hosted by Google

Ingham, and on divers other days and times during his official term at Lansing, aforesaid, did unlawfully conspire with one William G. Patrick, and divers other persons unknown, fraudulently to withhold from sale, and mark, or cause to be marked, as sold, large quantities of State lands, for the benefit of said conspirators, in fraud of other *bona fide* purchasers and settlers, with the intent to cheat and defraud such *bona fide* purchasers and actual settlers, and all others who might wish to purchase the same.

And in pursuance of said conspiracy the said Charles A. Edmonds did mark, or cause to be marked, in said office, on the plat books thereof, as sold, large tracts of land that were not sold, by which Edmonds, his deputy, and clerks in office corruptly received large sums of money, and said Charles A. Edmonds, Commissioner of the State Land Office, was guilty of corrupt conduct in office, a violation of his oath of office, and a great fraud upon the people of this State.

ARTICLE V.

That said Charles A. Edmonds, Commissioner of the said State Land Office, from time to time, from the commencement of his official term in January, 1871, to the time of the passage of the resolution of impeachment in this case, to wit: the 28th of March, 1872, unmindful of the high duties of his office, in violation of his official duties, his oath of office, and the laws of this State, did, in his office, and with his deputy in office, and in his official time, so engage in, and carry on, the purchase and sale of swamp land "scrip" (so-called), as to operate in fraud of, and to the damage of the primary school fund, the several counties of this State, and of the treasury of the State.

And the said Charles A. Edmonds, Commissioner of the State Land Office, was in this manner then and there guilty of corrupt conduct in office, and did commit a misdemeanor in office.

Hosted by Google

ARTICLE VI.

That said Charles A. Edmonds, Commissioner of the State Land Office, during his official term as such commissioner, to wit: From about the first day of January, 1871, to the 28th day of March, 1872, unmindful of the high and responsible duties of his office, of his oath of office, and disregarding the rights of the people of this State, and for the corrupt and unlawful purpose of personal benefit and gain, did appoint and keep in his office, as clerks, certain men of dissolute habits and character, and unworthy the high trust and confidence necessarily required of men in their positions, and did, also, allow his clerks in office, in violation of the laws of this State, to purchase, directly, and indirectly, from the State, lands for sale in said Land Office, and to be interested in purchases made in the name of others, directly and indirectly, and to traffic, and corruptly sell and get unlawful gain, in the sale of valuable information contained in such office, within their knowledge as such clerks, and to act as the agents, for reward, of certain land dealers, in entering land, thus giving such dealers an undue advantage over others seeking the entry of lands at said office.

And the said Charles A. Edmonds, Commissioner of the State Land Office, was thus then and there, guilty of corrupt conduct in office, and did commit a misdemeanor in office.

ARTICLE VII.

That the said Charles A. Edmonds, being a public officer of the State of Michigan, through whose hands public moneys pass, to wit: the Commissioner of the Land Office as aforesaid, has at divers times during the present term of his said office, and as such officer, received moneys current by the laws of the United States as money in payment for certain lands belonging to the State of Michigan, and has corruptly, and in violation of the laws of this State, and especially in violation of section two hundred and thirty-four of the compiled laws of eighteen hundred and fifty-seven, converted or changed said moneys

Hosted by Google

into swamp land scrip, so-called, retaining said moneys for his own use and benefit, in whole or in part, and entering said lands, in payment for which he had received said moneys as purchased and paid for by said scrip, and has not deposited or turned over to the proper officer of the State said moneys, so received in purchase of said lands.

By reason whereof the said Charles A. Edmonds has committed a crime against the laws of this State, and is guilty of misconduct in office.

ARTICLE VIII.

That said Charles A. Edmonds, Commissioner of the State Land Office, unmindful of the dignity and high duties of this office, and of the wholesome requirements of the laws of the State, on or about the first day of March, 1872, at the city of Lansing, the Capital of this State, contriving and intending to debauch and corrupt the morals, as well of youth as of others, good citizens of this State, did, at the time and place aforesaid, and at other times and in other places in this State, unlawfully, wickedly, maliciously, and scandalously publish, circulate, and distribute, or cause to be published, circulated, and distributed, a certain anonymous and obscene printed paper entitled "Every Wednesday Night," containing impure, scandalous, and obscene matters, language, and description, manifestly unbecoming the dignity of his office, a scandal in the community, and tending to the corruption of the morals of youth, and other good citizens of this State, and to the evil example of all others, and in violation of the laws of the State, and against the peace and dignity of the people of this State.

And the said Charles A. Edmonds, Commissioner of the State Land Office, did thus, then, and there commit, and was guilty of a misdemeanor, contrary to the form of the statute, and against the peace and dignity of the people of the State of Michigan.

Hosted by Google

ARTICLE IX.

That the said Charles A. Edmonds did during the months of March or April last past, and while he was such Commissioner of said Land Office, knowingly, willfully, and maliciously. at Laporte, in the State of Indiana, and elsewhere in the United States, deposit or cause to be deposited, in the postoffice at said Laporte, and in the several postoffices at other places in the United States, for mailing, or for delivery from said postoffice or postoffices, a certain obscene print or publication in the form of newspapers, and entitled *Every Wednesday Night*, knowing the same to be of a vulgar and indecent character, in violation of the laws of the United States, and especially of a statute of the United States entitled "An act relating to the postal laws," approved March 3, 1865.

By which act of depositing, or causing to be deposited said print or publication, in said postoffice at said Laporte and elsewhere, he, the said Charles A. Edmonds, did commit a crime against the laws of the United States.

ARTICLE X.

That said Charles A. Edmonds, Commissioner of the State Land Office, unmindful of the dignity of his office, his duties, his oath of office, and the requirements of the laws of this State, at divers times during his official term as such Commissioner, since the fifth day of July, 1871, at the city of Lansing, and in other places within this State, has been drunk, or so affected by his drinking of intoxicating liquors, as to disgrace his office and unfit him for the discharge of his official duties; and the said Charles A. Edmonds, Commissioner of the State Land Office, did thus and then and there show good cause for his removal of office, under the provisions of an act entitled "An act to subject all persons holding office under the goverment of the State of Michigan to removal from office for drunkenness," approved April 5, 1871.

Hosted by Google

ARTICLE XI.

That said Charles A. Edmonds, Commissioner of the State Land Office, unmindful of the dignity, high duties, and position of his office, and of the laws of this State, and the wholesome requirements of the laws of decency and morality, did, on or about the tenth day of October, 1871, at the city of Lansing, situated in the county of Ingham, at the Lansing House, commit adultery with a female whose name is unknown, he, the said Edmonds, then and there being a married man; and did also since he entered upon the duties of his said office, at divers other times and places in said Lansing, commit further and other adulteries, against the form of the statute in such case made and provided, and against the peace and dignity of the people of this State.

And the said Charles A. Edmonds, Commissioner of the State Land Office, did thus, then, and there commit, and was guilty of a crime, contrary to the statute in such case made and provided, and against the peace and dignity of the people of the State of Michigan.

And the managers elected by the House of Representatives under and by virtue of the constitution of this State, and authorized by the said constitution and the laws of this State to manage, on behalf of said House, the trial of the impeachment of said Charles A. Edmonds, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles or other accusation under the said resolution of the House of Representatives for the impeachment of the said Charles A. Edmonds, Commissioner of the Land Office, and also of replying to his answer which he may make unto these articles herein preferred against him, and offering proof to the same and every part thereof, and to all and every other article or accusation which shall be exhibited by them on behalf of said House as the case shall require; do demand that Charles A. Edmonds may be put to answer the corrupt conduct in office and the crimes and misdemeanors herein

Hosted by Google

charged against him, and that such proceedings, examination, trial, and judgment may be thereupon had and given as may be agreeable to law and justice.

I. R. GROSVENOR,
LYMAN COCHRANE,
B. W. HUSTON, JR.,
Managers on behalf of the House of Representatives.

The President—The articles will be filed.

Gentlemen Managers upon the part of the House—The Senate will consider the subject of impeachment, of which due notice shall be given.

The managers then left the chamber.

The President—What is the pleasure of the Senate?

Mr. Cravath—I move that the Senate proceed to the election of two reporters.

The President—The Senator from the twenty-first will reduce his motion to writing.

Motion reduced to writing and sent to the Chair.

The President—The Senator from the twenty-first sends to the Chair the following motion, that the Senate proceed to the election of two reporters. The question is upon the adoption of the resolution.

Mr. Moffatt—I move that we elect by ballot.

The motion was agreed to.

Mr. Cravath—I nominate James W. King, of Lansing.

Mr. Alexander—I wish to nominate Mr. G. F. Hitchcock, of Kalamazoo.

Mr. Ball—I would like to suggest to the Senate in connection with the name of Mr. Hitchcock, the name of Henry F. Walsh, of Grand Rapids.

Messrs. Hitchcock and Walsh were declared elected.

Mr. Romeyn—Mr. President, if it be in order at the present stage of the proceedings, I will offer a resolution in reference to the issuing of the writ commanding the presence of the respondent, as follows:

Hosted by Google

Resolved, That a summons be directed to issue in the form prescribed by the rules for the trial of the impeachment now pending, to be directed to Charles A. Edmonds, Commissioner of the State Land Office, commanding him to be and appear forthwith at the bar of the Senate of Michigan, there to answer unto the articles of impeachment this day exhibited before the Senate by the honorable managers elected for that purpose by the House of Representatives, said writ of summons to be accompanied by a copy of said articles, and the execution of the same to be committed to the Sergeant-at-Arms.

The resolution was adopted.

Mr. Romeyn—I offer a resolution in reference to the printing of the rules, that were adopted to-day, as follows:

Resolved, That the Secretary of the Senate cause to be printed, in a form convenient for use, three hundred copies of the act regulating trials of impeachment, and of the rules adopted for the trial of the impeachment of Charles A. Edmonds, now pending, together with the articles furnished.

Mr. Wheeler—I move to amend by adding the words "together with the articles of impeachment."

Mr. Romeyn—I will accept the amendment.

Mr. Cravath—I move to amend the resolution by striking out the word "three" and inserting in lieu thereof "five."

Mr. Sheley—I hope that will not pass; one hundred is just as good as five hundred.

The amendment striking out the word "three" and inserting the word "five," was lost, and the resolution as originally offered was passed.

The President—The Chair will suggest to Senators that it will not be possible for the Secretary of the Senate to prepare the summons at this session, as it will be necessary to copy the articles before service can be had. The Senate may take such action as they deem proper.

Mr. Cravath—I move we adjourn until to-morrow morning, at ten o'clock.

Hosted by Google

The motion was agreed to, and the President declared the Senate sitting as a court of impeachment adjourned to the hour named.

Friday, A. M., April 12, 1872.

The President *pro tem.* entered the Chamber and took the Chair.

The President *pro tem.*—The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms—Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence while the Senate of the State of Michigan is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Charles A. Edmonds, Commissioner of the Land Office!

The Secretary called the roll and announced a quorum of the Senate present.

Mr. Moffatt—I move that the reading of the proceedings of yesterday be dispensed with.

The Presiding Officer—The Senator will reduce his motion to writing and send it to the Secretary.

Mr. Waterbury—I see Senator Storrs in his seat. The oath has not been administered to him.

The Presiding Officer—Mr. Storrs will step forward.

Mr. Storrs came forward and the oath was administered to him by the President *pro tem.*

Mr. Briggs—Mr. President, would a resolution at this time be in order?

The Presiding Officer—The Senator from the Thirty-first is preparing a motion which is really before the Senate at this time.

Mr. Moffatt sent to the Chair the following motion, which was read by the Secretary:

Hosted by Google

Resolved, That the reading of the journal be dispensed with until further ordered.

The motion was agreed to.

The Presiding Officer—The Secretary will read the return of the summons.

The Secretary read as follows:

The foregoing writ of summons addressed to Charles A. Edmonds, Commissioner of the State Land Office, and the foregoing precept addressed to me, were this day duly served on the said Charles A. Edmonds, Commissioner of the Land Office, by delivering to, and leaving with him, true and attested copies of the same, at his office in the city of Lansing, this 11th day of April, instant, at 7½ o'clock P. M.

HENRY SEYMOUR,
Sergeant-at-Arms of the Senate.

LANSING, April 11, 1872.

The Sergeant-at-Arms came forward and the Secretary administered the following oath:

"I, Henry Seymour, Sergeant-at-Arms of the Senate, do swear that the return made and subscribed by me upon the process issued on the 11th day of April, A. D. 1872, by the Senate of Michigan, against Charles A. Edmonds, Commissioner of the Land Office, is truly made, and that I have performed said service therein prescribed. So help me God."

The Presiding Officer—The Sergeant-at-Arms will call the accused.

The Sergeant-at-Arms—Charles A. Edmonds, Commissioner of the Land Office! Charles A. Edmonds, Commissioner of the Land Office, appear and answer to the articles of impeachment exhibited against you by the House of Representatives of the State of Michigan!

Mr. Romeyn—Mr. President, I understand that the accused, Mr. Charles A. Edmonds, has obtained counsel for his defense; and I understand further that they are not aware that the Court has been organized. I move, therefore, that the Ser-

Hosted by Google

geant-at-Arms be directed to inform the counsel for the accused that the Court is ready to proceed.

The Presiding Officer—If there be no objection, the Sergeant-at-Arms will so inform them.

The Sergeant-at-Arms presently returned with Charles A. Edmonds, the respondent, J. H. McGowan, Esq., of Coldwater, and J. B. Shipman, Esq., of the same place, who were conducted to the seats assigned the respondent and his counsel.

The Presiding Officer (to the counsel for the Commissioner) —Gentlemen, the Senate is now sitting for the trial of the impeachment against Charles A. Edmonds, Commissioner of the State Land Office. The Commissioner appears in person and by attorney. The Senate is now ready to hear you.

Mr. Shipman—Mr. President, the respondent in obedience to the command of the Senate, sitting as a Court of Impeachment, personally appears here, and my brother McGowan and myself appear as his counsel, to-day, and desire to have our appearance entered for him.

The Presiding Officer—Your appearance will be so entered, in person and by counsel.

Mr. Shipman—On behalf of the respondent we beg leave to submit a motion to the Senate, which I will read.

In the matter of the impeachment of Charles A. Edmonds, Commissioner of the Land Office:

We, the undersigned, counsel for the respondent, move the Court that the —— day of May, next, be appointed as the day for the respondent to move, plead, answer, or demur to the said Articles of Impeachment, and submit to a trial upon the same.

JOHN B. SHIPMAN,
JONAS H. McGOWAN,
Counsel for Respondent.

I have left a blank that the Senate might fill it. In support of the motion I will read an affidavit of the respondent.

The counsel read as follows:

Hosted by Google

The Senate of the State of Michigan, sitting as a Court of Impeachment, in the matter of the impeachment of Charles A. Edmonds, Commissioner of the State Land Office:

County of Ingham—ss.

Charles A. Edmonds, being duly sworn, says that he is the respondent in the above matter.

That upon the evening of the 11th of April inst., he was served with a copy of the summons in said matter, and there for the first time saw a copy of the articles of impeachment against him, and knew what he had to meet upon the trial before the Senate. That he has heard the copy contained in the summons read, but that the same is so vague, and the charges and specifications in many and most of the articles so general, that they do not give him that information which he hoped and expected to receive therefrom. That these general charges, covering in many instances so large a period of time, but without directing him to any specific act or time definitely, throws upon him the necessity of a more extended preparation than he had hoped his defense would demand, requiring much more time than if the matters had been charged or described with sufficient certainty for him to have known what was meant, and where to direct his testimony.

That he did not succeed in obtaining a copy of the testimony taken by the committee in the House, until last Monday evening. That upon the evening of Wednesday, the 10th, two of his counsel saw such copy for the first time (as he is informed and believes), but have not as yet read the whole of it. That one of his counsel, who is absent, has not seen the testimony, nor a copy of the articles mentioned, to deponent's knowledge or belief. That deponent has not yet had a consultation with his counsel when they were all together, and never, until the evening of the 11th inst. mentioned, has had the necessary documents, or information in regard to what he had to meet in the case, to make such a consultation of much

Hosted by Google

moment, so far as arranging his defense is concerned. That he has done what he could, but he could do but little towards getting ready for trial with the uncertainty before him as to what he had to meet.

He further states that one of his counsel selected writes that unless the trial is postponed to a period as late as the middle of May, he cannot take part in the defense. That deponent verily believes that he cannot properly prepare his answer to the articles exhibited by the managers, and get ready for the trial before that time; and he is confident that it will not be in his power so to prepare for his defense that this honorable court can be made acquainted with the facts essential to a just decision of said cause, in less than the time mentioned.

And this deponent further says that he believes he has a full and complete defense to all matters alleged against him, upon the merits, and that he is anxious to proceed with the trial as soon as he can safely do so, and that this application for time to prepare his answer, procure the attendance of necessary witnesses, and make due and proper preparation for the trial, is not made for the purpose of delay, but only for the purpose of obtaining a full and fair hearing of the impeachment against him, on its real merits.

CHARLES A. EDMONDS.

Subscribed and sworn to before me, April 12th, 1872.

H. D. BARTHOLOMEW,
Notary Public, Ingham County.

Mr. President, I beg leave to call your attention, and the attention of the Senate, for a moment, and but a moment, to the law passed by the Legislature in cases of this kind. By section five it is provided that "the Senate when so organized," that is, organized as a Court of Impeachment,—"shall forthwith cause the person impeached to appear, and to answer the charge exhibited against him, and upon his appearance, he shall be entitled to a copy of the articles of impeachment, and

Hosted by Google

to a reasonable time to answer the same." I need not state that the usual practice in courts is to have their writs returnable on a given day and the summons served a certain number of days before the return day. This summons is returnable forthwith. Upon its return, by this section, the respondent is entitled to a reasonable time to plead,—to answer the same. By section seven it is provided that when the issue shall be joined in an impeachment, the Senate sitting as a Court for the trial of the same shall appoint a time and place for the trial thereof. That would seem to contemplate an adjournment, and, indeed, to provide for an adjournment to a future day when the Senate would come together again for the purpose of forming the issue, and to contemplate a trial after that time. We do not wish to put the Senate to the trouble of coming together again for that particular purpose, if we can avoid it: hence this motion, which contemplates making but one adjournment, putting the time before the forming of the issue, and that the respondent would be entitled to, properly, afterwards, all together, in one and the same adjournment. Now, Mr. President, of course, the facts and the circumstances of this case, and the manner in which the proceedings have been conducted in the House and up to the present time, are well known to the members of the Senate. A committee was there appointed; testimony was taken before the committee but the respondent was not present, did not cross-examine the witnesses, had no opportunity to produce witnesses in his own justification, or against those offered by the committee. He regretted this very much; he was in hopes that he might have an opportunity to there make his defense and save the trouble and expense of a trial before the Senate; he was confident that he could make a successful defense there. I state this, Mr. President, not in any degree, or in any way to reflect upon the action of anybody. The proceedings of the House and of committees of the House are matters upon which I am not well advised, and I doubt not the gentlemen who had the

Hosted by Google

business in charge did their duty, and only their duty in the matter. I only call the attention of the Senate to it, to remind them of the circumstances in which the respondent is placed. I presume they conducted the matter properly, but he was, for the reasons mentioned, not advised,—did not have the information that he otherwise might have been possessed of about the case. He had to get a copy of the testimony before he could know what they had proven against him. In courts under our system of practice in criminal cases, we have an examination before a magistrate, where the accused is informed of the facts charged against him, and knows what to meet when he comes to the trial; but we were not advised of any of these facts until we procured this testimony, and last evening, for the first time, we saw a copy of the articles. Now, before these articles were served, we had hoped that the charges would be specific, directing us as to time, and place, and acts, so that we could have known definitely and dististinctly what we had to meet, at once, and hence made speedy preparation for trial. I wish to call the Senate's attention to those articles, not for the purpose of criticising them in any way, but simply to bring before the Senate the vagueness and the uncertainty of the charges in them, and to show what the respondent must necessarily do to be prepared to meet them on the trial. The first article states that on the 4th day of January, 1871, and in divers other days and times between that day and the time when the House passed the resolution of impeachment, on the 28th day of March, 1872, the respondent did certain things, including all that time. Of course it is necessary, to be prepared, that he should go over all that time and be prepared to meet all transactions during it; and then, further on, they state that he did withhold from sale divers large tracts of land, for the particular benefit and advantage of certain land dealers. They do not state who the land dealers are, nor describe the land. As a consequence, the responden tmust be prepared to meet anything that may come; he must be prepared to

Hosted by Google

show up all the land in the State under that charge. His attention is called, not directly to any piece of land, nor to operations with any particular individual.

The second article of impeachment is just as vague as to time. It does not describe the land; it does not state, even, what class they are in.

The third, in regard to licensed lands, may include all licensed lands in the State. He must be prepared to show the facts in regard to each piece in this class of lands. All transactions in his office, and what was done in regard to them, he must show. The practice referred to is not stated, nor when the practice in regard to it was established or when it existed. The names of no persons are given in that article. He does not know what he has to meet, except that he knows that he must be prepared at all points if they go into the evidence under that general charge, and I do not now say that they cannot. He must be prepared, if he expects to make a successful defense, to go into evidence of all of the transactions in regard to licensed lands in the State,—a work of time and labor.

Article four is just as vague and uncertain, and covers as much time. The name of William G. Patrick is mentioned, but the others are stated as divers persons, unknown. There is no description of land here, nor is there a class mentioned.

In article five it is charged that he did "*so* engage in and carry on the purchase and sale of swamp land scrip (so-called) as to operate in fraud of and to the damage of the primary school fund, the several counties of this State, and of the Treasury of the State." The manner of doing it,—what he did,—the specific act, we are not informed of at all. We must be prepared to meet all the transactions of the office from its commencement until now; from the date of his official term until the 28th of March at least, and to show just exactly what he has and what he has not done in regard to it. We are not pointed to any specific act.

Hosted by Google

Article six is equally vague as to the time and as to the land.

The matters alleged in the seventh article we were not informed of before we saw the articles. That is equally vague as to the time, and is not specific as to the act.

In the eighth article, the place is all over the State.

In the ninth article, it is all over the United States. To meet that charge successfully upon the merits, as alleged there, would be almost an impossibility; certainly it will require considerable time to be reasonably prepared for a defense upon it.

Article tenth embraces his conduct during his entire official term. He has got to be prepared to show his whole life during that time, no specific act being pointed out.

In the 11th article, time and place are mentioned. We have nothing to identify the person, however, except the sex. It is alleged that the offense was committed with "a female whose name is unknown,"—that is all there is of that; and that he committed a like offense "with divers other persons unknown."

I briefly call attention, Mr. President, to these articles to show what we must do to be prepared,—what the respondent must do to be prepared for his defense; and it seems to me a proper matter for the Senate to take into consideration upon this motion; not, I say, as in any degree criticising the articles, or raising any point as to their sufficiency. I do not now do that.

Mr. President, we do not make this motion for the purpose of delay. We have no such object. We have no object except to come to a speedy trial. The respondent is resting under a cloud from which he can only escape by a trial before the Senate. His counsel have no other object but to try the case and get through with it as speedily as possible. If we did not really feel and honestly believe that it was necessary that we should have this time extended to us, we would not ask it. I beg Senators to consider that we do not make this motion for the purpose of delay at all, but simply for the purpose of giving this respondent an opportunity to be fully pre-

Hosted by Google

pared for trial. He has great interests, Mr. President, at stake here. He has borne hitherto a good character; he has maintained it upon the battle-field; he has borne it in the private walks of life; it has never been assailed until his official life began, and not until quite recently in that. His good name is as dear to him as it is to other men,—as it should be to all true men. The Senate will remember that the consequences of a mistake here are past remedy. I trust they will not forget this in considering the necessity of the respondent's having time for a thorough and complete preparation for his defense. There is no pardon which can reach your judgment; there is no court sitting for the correction of your errors, or for the correction of any slip or mistake that we may make here. Hence the necessity for a full and complete preparation at the time when the trial is had. Upon this, and with these few suggestions, Mr. President, I submit the motion, and earnestly hope that the Senate will allow us the time that we have asked, as late as the middle of May. We have not asked it because we expected to get less. We would have hoped for longer time, but as we have been given to understand that there would be opposition to that, we have come before the Senate stating our case fairly, and frankly asking for what we believed that we needed, but asking for no more than we believed was necessary to prepare this defense.

The Presiding Officer—The Secretary will read the motion.

The Secretary read the motion as follows:

In the matter of the impeachment of Charles A. Edmonds, Commissioner of the Land Office:

We, the undersigned, counsel for the respondent, move the Court that the —— day of May, next, be appointed as the day for the respondent to move, plead, answer, or demur to the said Articles of Impeachment, and submit to a trial upon the same.

JOHN B. SHIPMAN,
JONAS H. McGOWAN,
Counsel for Respondent.

Hosted by Google

The Presiding Officer—The first question will be upon filling the blank.

Mr. Shipman—The middle of May is the very earliest that we could go to trial. I did not state a definite time, because I did not know but some Senator might have a special objection to the day named; any day about that time will do. I will name then the 15th, if it be a proper day.

Mr. Sheley—What day is the 15th of May?

Mr. Shipman—Wednesday.

The Presiding Officer—The blank is now filled by the counsel on the part of the accused, the 15th. Do the Managers wish to be heard upon this question?

Mr. Manager Huston—Mr. President: The Managers do not desire to take any undue advantage, and understand, as a matter of course, that proper time will be given to the respondent to prepare to make his defense, but we are opposed to the length of time asked for by counsel for the respondent. We do not think that the reasons assigned in the affidavit and in the argument of the counsel sufficient to warrant the Court in extending the time to the 15th of May. I desire to call the attention of the Court to some remarks of counsel in regard to the proceedings had before the committee, and say that, as a matter of fact, Mr. Edmonds was before the committee, and they took pains to state to him fully and distinctly all the evidence that had been received, before it was reported to the House, and that we believe he was fully advised of the charges that are brought against him; that at the time the House adjourned there was an arrangement made by which he could take a copy of all the testimony; it was left with Mr. Jones, Clerk of the House, with an express arrangement made by which he could procure a copy as soon as he chose to do so; a time was also appointed and an invitation extended to him to be present at the time the testimony was read before the House. He could have been there at that time, but, as a matter of fact, the testimony was, in substance, all stated to him before the time that

Hosted by Google

it was reported to the House, and before the resolution of impeachment was passed by the House; and that being the fact, we come to this conclusion: that during the last two weeks, or nearly two weeks since the resolution of impeachment was passed, that he must have known what he was expected to answer; and I understand that his counsel was here at the time of the resolution of impeachment,—the gentlemen that represent him here to-day were present at the time the resolution of impeachment was passed by the House, and have knowledge of the facts that are presented against him at this time, included in the articles of impeachment,—and that he has had this time to prepare for the trial.

I am glad of one statement that is made by the counsel, and the Managers all agree in that respect,—that it is better, as a matter of course, if we can arrange it so as to have the answer and the trial proceed at once, in order to save the expense, or save the time and the trouble of the Senate coming here at two different times; but it seems to me that the defense can be ready to proceed in ten days or two weeks as well as they can to put the matter off until the 15th of May. I do not know, only as I have heard indirectly, who the counsel is that is not present, with whom they say they have not had an opportunity to consult; but I suppose it is reasonable to suppose that this counsel has been employed for some time, and if, as I have heared it intimated, that one of the reasons why they have not consulted with him particularly, and one of the reasons why they want this matter put off until the 15th of May, is because that counsel is engaged in court, I do not think, if they employed him with the understanding, knowing of the fact that he would have to be in court until the 15th of May, that that is a good excuse at all; because there were other counsel in the State, no doubt just as eminent and competent, who could have been employed, who could have been here, and would not have been tied up in court. So far as the Managers are concerned, they are ready to proceed with the trial, or can

Hosted by Google

be ready in a very few days,—almost any time, ready to proceed with the trial,—and we think that it is important, not only for Mr. Edmonds, but for the best interests of the State, under all the circumstances, that this case be disposed of just as soon as it can be,—disposed of as speedily as possible, consistent with giving the respondent a sufficient opportunity to prepare for his defense; and we believe if the matter is continued for two weeks that it will be ample time, and all the time that should be given to him to prepare. Under all the circumstances, I do not know as I care to say anything more on this question.

Mr. Manager Cochrane—Mr. President: Something has been said here with reference to the vagueness of these articles of impeachment as being the cause why time of rather extraordinary length should be granted to the Commissioner. It has already been stated by one of the Managers here that the Commissioner had an opportunity to know the character of these charges. Whether he was aware of them—aware of them generally—until last evening I know not; but so far as the vagueness of these articles is concerned,—so far as what they call the difficulty of answering these charges is concerned,—they are of that kind which every man should be prepared to meet at once. We do not propose here in there charges to attack every act of the Commissioner's official career. We do not propose to examine into every piece of land and ask as to every piece which he has sold or which has been held for that purpose. We propose only to attack his conduct if we shall have opportunity under these articles, as to these matters which we claim come within the Articles of Impeachment. He is as well aware as we are whether other acts can be attacked; and where there is any doubt with regard to his conduct, it is his duty to prepare, and it is his duty to be ready to meet all of those weak points in his conduct if any such points exist. It is not necessary for them, as has been said, to travel all over the United States to know whether he deposited,

Hosted by Google

if he deposited at all, this newspaper, or this paper, in the postoffice, if he did deposit it anywhere. We can only find places and attack his conduct for depositing it in these individual places, and he must be prepared to meet us at these points. He need not travel to Mobile—he need not travel to New Orleans—he need not bring anybody from New York—to prove that he did not deposit these papers in those postoffices; but, if he did deposit them in Laporte, if he deposited them in Logansport, if he deposited them in Toledo, why, then, it becomes him to bring his witnesses here; these are the places I give by way of illustration where we shall claim that he deposited these papers. So with regard to all these other articles. He is as well aware as anybody, Mr. President, where his conduct has been impeachable; and he can prepare himself, certainly, it seems to me, within a short time. If I, or any other gentleman here, were called upon to defend his official career,—if I were called upon to defend a general charge against me during the whole course of my life, does any one imagine for one moment that it would take me six months or a year to bring in witnesses here who would cover every single portion of my life,—every single moment of my existence? Such is not the theory of an impeachment at all. Such is not the idea which any person who stands impeached before a body of this kind has. They must come prepared to protect their official career; they have it before them at all times. So far as the form of these articles is concerned, they are fully as specific as they are in a great many cases. I am well aware that in many instances—in very many instances—articles are more specific. Especially since the war, it has been customary to draw up articles of impeachment in some such form as pleadings are usually drawn in military courts, with articles and specifications, or something of that nature; there is no doubt of the propriety of that; but so far as the right that the counsel of Mr. Edmonds have to claim that we should have drawn them more particu-

Hosted by Google

larly, I shall deny that right; if they insist upon it. It is well known by all those who have examined the English impeachment trials, that their charges, all through, although they were of a criminal character, although they affected the life and the liberty of the persons, were more general even than these; and in those cases but very little time was given—a comparative short time was given for the party to prepare himself for trial, and it was upon this express theory, that a man knows his own innocence, and knows where he is likely to be attacked, for no court goes upon the theory that we shall produce witnesses here, who will perjure themselves willfully; they may be mistaken, but they will not go upon the theory that we will attack any and every portion of his life, bringing witnesses to attack any and every portion of his life, merely for the purpose of succeeding in an impeachment. I certainly may say for myself, and I presume I may say for the Managers, that we have no desire to succeed in this case, if the Commissioner is not guilty. I for one, should ask this Court, nay, I should implore this Court, if he is proven to be not guilty, to acquit him unanimously; on the other hand, if he is guilty, I hope the Court will see that justice is done. I do not come here even with the ordinary professional pride of an attorney to win this case without any ground. I hope that Mr. Edmonds will establish his innocence; and in establishing his innocence it seems to me that he does not require a month to prepare. So far as the counsel is concerned, and the engagement of counsel, I recognize fully his right to employ any counsel,—his duty to employ any counsel whom he hopes will defend him successfully; and there is no one that recognizes more than a lawyer the imperative duties which are sometimes forced upon him by other duties, and the necessity even of some extended time which does not apply to other business; but it seems to me that the time that is asked here by Mr. Edmonds is certainly an unusual time, and I for one am opposed to granting it. Any reasonable time I wish he should have; but beyond that I hope the Senate will not extend it.

Hosted by Google

Mr. Manager Grosvenor—Mr. President: One word in addition to what my associates have said in regard to the principles and the theory upon which we propose to prosecute this impeachment. We might as well develop it a little at this time. We have engaged in this matter with a consciousness on the part of the Managers, and with a full belief, that the respondent was guilty; that he was guilty of the charges contained in the resolution of impeachment; and believing that, we entered upon this duty with a determination to bring all the facts before this tribunal, and have this tribunal pass upon those facts. We have no desire to suppress anything, nay, we want everything that is proper to act upon before this Senate brought out, whether upon the part of the People or the respondent; but we are opposed to this extension of time, as has been stated and for the reasons stated, and in addition we are opposed to it because we think it is not necessary. The charges contained in the first seven articles here, relate solely to his conduct in office, where with a corps of seventeen clerks he ought to be presumed by this tribunal to know anything and everything that has transpired within his official term, in that office; and though they are general, yet it is right in the shadow of his office that we propose to attack him. These clerks are there, there has been no suspension from office, they are there now, and if the charges are general of corrupt conduct in that office, the proof must of necessity be specific, and within his own hand, by these men, who, by his prerogative, have been put there. They are presumed to be his friends, they are presumed to be in his interest, and he certainly has the means within five minutes' time of calling his records, his clerks, the precedents, and anything that he could be attacked upon, right before this Senate. Now, so much for that. It requires no time; if the articles are general, an answer may be general; a general denial, a plea of not guilty, would make an issue. In regard to the other acts, all, saving the mailing of matter without the State, are within

Hosted by Google

this Capital of the State, within sight of this building, this State House. They are specific enough to inform the gentleman, and, as has been well said by my brother Huston, he had full and intimate knowledge of the testimony,—the substance of the testimony. The damaging part of the testimony was stated to him minutely, fully, and fairly, before the report was made. He was invited to hear it in the House. As has been well said, he might have heard it. There was a resolution passed allowing him access to that testimony after it was read by the House; it was within his reach and control continually. The learned gentlemen who represent him here as counsel, I believe were present. Competent, in the highest degree, to discharge the duties that they have undertaken, they had all the light that they have now. If they have seen fit to rest until the specific articles were exhibited here, without making any preparation, I do not know why the People should be delayed, why this Senate and the Managers should be delayed and excuse that neglect. Ordinarily he would be presumed to have made some preparation in the courts, after an examination,—a preliminary examination before the magistrate, I apprehend that the courts of this State, the common-law courts, would say that a man was guilty of laches who made no preparation, from the time he was examined and bound over, until he was arraigned upon the indictment; and there he must show specifically why he is not ready,—he must show the absence of material witnesses, of material testimony that is beyond his reach. The necessary preparation to answer these articles, I think, is the main ground urged here on the part of the respondent. They need time to answer these articles, because they are general. If they are general, they cannot answer them specifically. It is not supposed for a moment, that this respondent is to be required to go over his whole official life and detail its history, and say, "This is our answer!" The charges are general, the answer may be equally general. When the proof comes, it may be,—if we are allowed to give proof

Hosted by Google

under the articles,—would be specific and the proof would be within his reach.

In regard to these articles affecting his private character as the counsel state, there is only one out of the State, and the gentlemen and the Senators here must know that he has intimate knowledge of that. He was not present before the committee, for no fault of the committee, at the time the testimony was taken,—it was because the gentleman was necessarily absent from the State; and then and there, at that time, he had full and intimate knowledge of the charge here, without the State; he had better knowledge of that,—he knows to-day, at this instant, whether that is true, and whether there is testimony within his reach to defend as to that charge. He had knowledge of it, long before the Managers or the House had knowledge of it, so that we think it would be an unreasonable time to ask until the 15th of May to make answer to these articles, and to make ready for trial. In the form the resolution is presented, if we may be allowed to say one word in regard to that, we believe that the answer should be filed—the answers to these articles should be filed—some days before the time of hearing. If he is allowed two weeks, for instance, to prepare for the trial, if the trial is set down for two weeks, he should, by the order of this tribunal, inform the Managers by his answer ten days or one week before the time of trial, that we may have some knowledge of what the particular defense set up is; so that we think this order, whenever the order is made, should require him to plead—to answer this. If he has two weeks to prepare for trial, then he should file his answer within, say, one week, and serve a copy upon the Managers.

We feel that the interests and welfare of this State are as well served by acquitting an innocent man as in a judgment of guilty for a guilty man. We have no desire, as has been well said,—no feeling in any way,—but that substantial justice shall be administered, and we are willing that he shall have a

Hosted by Google

reasonable time under all the circumstances, inasmuch as the testimony is so within his reach,—the knowledge necessary to prepare is so within his own office and under his own control. He has not been suspended from the functions of his office. He cannot plead here that he has not access to his office, and to all the files and papers,—he has them here. He has had them ever since the resolution of impeachment was introduced. That resolution of impeachment is not restricted at all; these articles cover no more than was covered by that resolution; that resolution was for corrupt conduct in office, —certainly that was general,—for crimes and misdemeanors. These articles cover no more ground; they attempt to state it particularly, as far as the Managers were able to do so, without making a document so voluminous that it would tend to confuse rather than to benefit.

Mr. McGowan—I beg leave to add a word to what my brother has already said in support of this motion for continuance. Of course, Mr. President, we are all aware that the practice in regard to impeachment cases is entirely unsettled in this State, this being the first trial of the kind; and that, at least to some extent, what we may do in the conduct of this trial, will become a precedent hereafter; and certainly it would become us to go carefully if we are to make precedents to be followed. The Senate cannot wish, and I think the People will hardly ask in any way, that there be any undue haste, at least, in pressing this matter for trial. The interests that are involved are very great, not alone to the respondent, but to the State at large, and the request for a continuance is not to delay the trial, but that we may have ample time to prepare for the defense. The Honorable Managers have stated as matters of fact some things that transpired in the preliminary examination of this case before the committee, that we were not apprised of. We certainly were unaware that the respondent might have appeared before that committee, there to make a defense, to cross-examine the witnesses produced

Hosted by Google

on the part of the complainants or the committee, or to hear the testimony there taken. Our recollection of the matter is, that the committee was appointed either Friday or Saturday, possibly took some testimony on Saturday following that. On Monday, early in the morning, the respondent telegraphed the Speaker of the House that he had noticed a committee was appointed for that purpose, and would be glad to have him inform that committee that he would come on the next train, and would be here at the earliest possible moment to appear before them if consistent with their rules.

We are also informed by the respondent that on his return here on Monday evening, he saw one member of the committee and asked what arrangement had been made for the taking of testimony, and what testimony had been taken, and if he would be allowed to hear the testimony, or to appear in any capacity before the committee. He was informed by that one of the committee that he was only one member, and that he believed the arrangement had been to take the testimony in secret, but that they would meet the next morning, and the matter would be laid before the committee, and if any such opportunity was allowed respondent he would inform him, and that he was not informed of the same.

It is well known, Mr. President, that there was a great deal of testimony taken before that committee. It is said by the Honorable Managers that the respondent was cited before the committee after the testimony was taken, and a statement made of the charges contained in the testimony against him, —a full statement of it. It will hardly seem probable that within any limited time that the respondent may have been before the committee, that anybody could have made a statement of the whole of the testimony, or given the respondent any very full idea of what the testimony was, that occupied nearly two days to read. We are informed by the respondent that he was before the committee but a short time; that the chairman did state to him, briefly and succinctly, and as well

Hosted by Google

undoubtedly as could be done within the length of time, what the charges were, contained in the testimony against him, but the respondent heard it then for the first time, all condensed, and did *not* get the copy, whatever the arrangement was, until last Monday evening. It was arranged, between the Managers and the respondent, that he should have the privilege of copying the testimony, but it was to be copied by one individual, that individual being named, and to be in the custody of the Clerk of the House. The testimony was very voluminous, and was copied as rapidly as the clerk could do it, working from twelve to fourteen hours a day, and was only completed on Monday last. These are, as we understand, the facts with regard to his facilities in getting an idea of what was produced before that committee, and of the proofs so far as he might gather them from the testimony there taken. Now, one word with regard to counsel. While probably it is not conclusive, and should not be in a motion of this kind, to allow a respondent time to procure counsel, yet I think it is always taken into consideration by courts, and very properly so. As stated by one of the Managers, the respondent is entitled to a counsel of his own choice, and, if possible, he should be granted time to secure such.

It is well known, Mr. President, that from the very earliest moment, almost, that the respondent could have made any preparation, the Supreme Court of this State has been in session with a long calendar; that all, or nearly all, the eminent counsel of the State are engaged in that court more or less of their time; that counsel is not procured in a minute; and the fact is, Mr. President, that counsel was not secured until within a very few days. I disclaim for myself, as my worthy brother has disclaimed for himself, on the part of the respondent, any intention of criticising the proceedings of the committee in the preliminary examination of this case, because I think they did according to the rules of practice adopted in other impeachment cases, as we have noticed them

Hosted by Google

in the books, and I disclaim any intention of criticising the pleadings in this case, because we believe there is authority for making these pleadings very broad and generic in their form. We have simply stated these matters as facts which exist, and which make it necessary that we should have more time for an examination of this case, and for preparation for defense, claiming that it is necessary, as we see it on a full consultation with the respondent, to prepare his defense as we think it should be prepared, that we have until the 15th of next month.

Mr. Shipman—Mr. President: If it would be in order—

The Presiding Officer—Certainly.

Mr. Shipman—I wish to say a very few words here. I am not familiar with the practice in such cases, and hardly know when I am in order, and when I am out.

The Presiding Officer—Counsel will proceed unless there is objection.

Mr. Shipman—First, then, in regard to these articles, I did not intend to say that they were not properly drawn. The gentlemen who drew them, the Managers, have, undoubtedly, investigated the matter carefully, and no doubt know whether they are properly drawn. At all events I do not know they are not. They are very much better advised in regard to what they should contain or should not, than I. I merely stated the fact to call the attention of the Senate to the difficulties under which the respondent had to labor in getting his defense ready, only that and nothing more. Now, with regard to the proceedings here upon the impeachment, it is stated that counsel for the respondent was present at the time the impeachment was directed in the House. It is quite true that I was in town—so far as I am concerned—at the same time. I really had no more information of the matter, however, than I could have obtained from the newspapers. I did not see the testimony, nor hear it read; I simply saw the abstracts in the newspapers afterwards. I got no insight into the case here.

Hosted by Google

We are not, Mr. President, asking time to get counsel here specially. We hear stated that counsel of the respondent's choice could not be obtained within a certain time, but we do not ask more time on that account; but we ask, simply, that time that would be necessary to enable us to prepare this defense in the shape in which the case is presented to us. Some reliance must be placed, and some confidence must be had, in the statements of counsel in such matters. This is a matter entirely new; and we cannot be expected to be ready in a moment. We cannot be expected to be ready at a moment's call; and I state, and state professionally, and state upon my honor, that I do not believe, under the circumstances of this case, that we can be ready for trial before the middle of May. If we go to trial before that, we go in a measure defenseless; the respondent will be here weaponless. Surely, this great proud State cannot afford to strike an unarmed man. The great maxim of the law is that "no one shall be unheard condemned." Not to give him a sufficient time to prepare, is to violate, if not the letter, at least the spirit of that rule. It is a maxim that governs all judicial tribunals, and is even carried into the private business and into the individual judgments of life. We ask simply that; we ask nothing more than that. Now, I say, no facts, no circumstances are here shown why this matter should be pressed. The Senate must be aware, particularly the lawyers here, of what the practice is in ordinary cases. The return day of the writ is in the future. We need not enter an appearance to the writ in a civil case until twenty days after the return day, and then we are entitled to the charges or specifications, or, as it is there called, the declaration; then we are entitled to twenty days to plead to that, and beyond that we are still entitled to fourteen days' notice of trial. This is the practice in ordinary cases enforcing a civil remedy in the courts. Will you give us less in a case like this? And yet we do not ask so much in this case. Are we unreasonable? These rights and this time to prepare are

Hosted by Google

secured to the humblest citizen of the State. Will they be denied to one whom the people have placed in so high a position? We cannot be ready before. I beg the Managers to remember that; I beg Senators to take that into consideration. We are not stating this here for the purpose of delay; but we thoroughly believe, honestly believe, that it is necessary that we should have this time, and I trust that it may be given to us. One of the Honorable Managers has here stated that he wishes our answer to be filed in a week, and copy served. I state that it is an utter impossibility for us to do it. Still, if we can have a proper time to prepare the answer and to get ready for trial, we will, as requested, serve a proper number of days in advance upon them, the pleadings, whatever they may be. We will agree to do that, so that they may be fully apprised of what they have to meet when they come here, and that is all that we can do; we cannot prepare this issue in an hour, and I trust the Senate will not ask us to. It is said by one of the Managers that we ought to know where we are likely to be attacked. That would be true if we knew the guilty spot; but I ask him, I ask any honorable gentleman, to say where he is going to be attacked, when a broad, general charge is brought against him. If he knows of no act, if he has done no act to his knowledge by which he has wronged any one, how is his attention to be directed to the act? I call attention to that, simply with reference to the vagueness of the charges here, and to show that we cannot now know what we are to meet. It is said by one of the Managers that they do not propose to go over his whole life. I suppose that we are to be guided in this matter,—at all events we cannot be safe without being guided and relying wholly upon the articles as presented. They have claimed the right to present the charges in the shape they are, and we must be prepared to meet them as presented. Now, Mr. President, it seems to me that this is a matter that will at once commend itself to the consideration of Senators, without further argument. The precedents are different upon

Hosted by Google

this matter of time. It has been said that the time asked is extraordinary. I do not find it so, that is in my reading of what few precedents I have had an opportunity to examine, although I have had no opportunity except for a very little investigation yesterday and last evening; but I find that the time has varied from thirty to sixty days. Some cases I think I can mention where the time given was longer than that, and some were shorter than that,—shorter than thirty days. But in looking over the cases, it seems to me that we are fully within the precedents, but whether we are or whether we are or not, we need this time; it is absolutely necessary to prepare and present this defense, and I trust that the Senate will grant it, and give the Commissioner an opportunity to make a full defense in this matter. I ask for him just what all men would ask if they were in the same place; I ask nothing more than that,—no special favors; I ask no time to get up a defense nor to manufacture evidence; I ask simply time to get ready to meet the case presented,—nothing more. Surely this case will not suffer on the part of the Managers by waiting; the witnesses are all known; the facts are known; the State cannot suffer. The power to prevent any injury by the Commissioner is vested in the Executive. How can any one be injured by this delay? I submit, Mr. President, and to the Senate, that this time is not unreasonable, and I hope that it may be allowed.

The Presiding Officer—The question is upon granting the motion made by counsel for the respondent.

Mr. Moffatt—I move that the chamber be cleared for the purpose of deliberation.

The motion was agreed to, and the Senate Chamber was cleared of all persons except the Senators and officers of the Court. After consultation, the doors were again opened, and the Managers and counsel for the respondent took their places within the bar.

The Presiding Officer (to counsel for respondent)—I am requested by the Senate to inform you that your motion has been denied.

Hosted by Google

Mr. Ball—Mr. President, has the decision upon the motion been announced?

The Presiding Officer—It has.

Mr. Ball—I offer the following resolution and ask that the Secretary read it.

The Presiding Officer—Send it to the Secretary's desk.

The resolution was sent to the Secretary's desk and read as follows:

Resolved, That the 23d day of April, A. D. 1872, at 10 o'clock A. M., shall be the day and time for receiving the answer and proceeding with the trial of the impeachment of Charles A. Edmonds, Commissioner of the State Land Office.

The Presiding Officer—Do the counsel wish to be heard upon the motion?

Mr. Shipman—Mr. President, I do not know that I can add much to what I have said. I do very earnestly hope that that resolution will not pass. We ask that an opportunity to get ready for this trial may be granted to us. We cannot be ready at that time, for the reason I have before stated. I earnestly hope the motion will not prevail.

I will state one further reason, which is a personal one. On the 24th of April I have a case in the Supreme Court for argument on that day, and I cannot very well change it. Counsel from out of the State are against me in it, and I have no one with me. It is a case that has been once argued in that court, and a re-argument has been ordered, and the judges have fixed upon that day, and it would very seriously inconvenience me. Indeed I do not see how I could be present to go on with the trial at that time. This is aside from the other reasons. I hope the motion will not prevail. Would the resolution offered be subject to amendment by me?

The Presiding Officer—Perhaps it would be subject to amendment by some Senator.

Mr. Randall—I would ask leave to make the following amendment: I move to amend by striking out the figures "23d," and inserting the figures "30th."

Hosted by Google

The resolution was sent to the Secretary's desk and read.

Mr. Randall—Mr. President, I did not expect to take any part in the argument of this question—

The Presiding Officer—Debate is not in order. Do the Managers wish to be heard upon this? If not, the question is upon the amendment.

The amendment was agreed to, and the resolution as amended was passed.

The Presiding Officer—What is the further pleasure of the Senate?

Mr. Manager Huston—I desire to offer a resolution asking for an order—the resolution is now being prepared—an order to be made by the Court, for taking the depositions of some witnesses that reside out of the State, and the resolution will be ready in a moment.

Mr. Briggs—If it is in order at the present time, I have a resolution that I will offer.

The Presiding Officer—There is a motion pending that is being prepared.

Mr. Manager Huston—I have the resolution prepared now.

The Presiding Officer—The Secretary will read the motion.

The Secretary read the motion, providing that an order be issued for the taking of the depositions of such witnesses as reside out of the State, and whose attendance could not be procured by the process of the Court, such depositions to be taken before any officer competent to administer oaths in the State where such depositions are taken.

Mr. Manager Grosvenor—The Managers would offer that as a suggestion to provide for any necessity that might arise in the case; and perhaps we might add with that a suggestion that perhaps it might be made one of the standing rules of the committee, so as to apply to the respondent as well. Perhaps it should be a general rule by which we might act. Perhaps it had better be prepared by the committee—the order; but there should be a rule of that nature in the case.

Hosted by Google

Mr. Shipman—Mr. President, we will do everything in our power to facilitate the taking of testimony out of the State; we will stipulate at any moment if we can aid them by doing so. We shall throw no obstacles in the way of the Managers to prevent their taking testimony out of the State, but I would simply suggest that it would be proper, and even necessary, that there should be a provision incorporated in the order in relation to giving notice to the other side, so that they might have an opportunity to attend and cross-examine. I do not know but that the rule provides for that, and I simply made the suggestion. At any time, however, if they will signify their intention or desire to take testimony out of the State, we will do all in our power to facilitate them in so doing.

Mr. Manager Grosvenor—I supposed that if this resolution was adopted, that the Court would fix the order, and I merely arise to say, that in case it is provided in the order that notice shall be given to the respondent's counsel, or should they desire to take depositions that notice should be given to us, that notice necessarily must be short, in order that the depositions may be taken between this and the 30th. Of course, if we are going through the usual form of settling interogatories and giving notice, that notice must necessarily be short.

Mr. Moffatt—I would ask the Manager if he proposes to take this testimony before an issue is joined here.

Mr. Manager Huston—Well, I suppose that it might be taken,—at least, if the counsel proposes to do as suggested by Mr. Shipman, that it might be taken,—even before the answer is filed. I know that would not be regular in court; but, as I understand, from the counsel for the respondent, that they propose to be ready for trial at the time this cause was adjourned to for trial—to answer and also to be ready for trial; and, under those circumstances, it seems to me that we might take the testimony of such witnesses as could not be procured. There is a witness who resides some distance from here, whose

Hosted by Google

testimony we shall desire to take, and, in order to do that, there cannot be much time used in the way of giving notice.

The Presiding Officer—The question is upon the motion made by Manager Huston. Are you ready for the question?

Mr. Cravath—Has that been amended so as to include—

The Presiding Officer—There has been no amendment offered.

Mr. Wheeler—Is that resolution intended as the order itself, or that the order shall be made?

The Presiding Officer—As it stands now, if it is carried, it would be the order itself. I would suggest that it needs remodeling somewhat, and should be withdrawn and perhaps offered by a member of the Court, and become incorporated as one of the rules However, I merely make that suggestion. The question is upon the adoption of the motion.

Mr. Waterbury—Would not it be well to have it referred to a committee?

The Presiding Officer—There can be no reference. We have no committees.

Mr. Manager Huston—It was not the intention in offering the resolution that it should be the order. It was merely intended as a motion, asking that the Court make a proper order to accomplish the object set forth in the resolution. That was the intention.

The Presiding Officer—The question is upon the motion. Those in favor will, as their names are called, say Aye; those opposed will say No. The Secretary will call the roll.

Mr. Cravath (when his name was called)—In the present shape I vote No.

Mr. Barber (when his name was called)—On account of the form of the order I vote No.

Mr. Jenks (when his name was called)—As I understand it, it would not accomplish what was desired, and I vote No.

The motion was adopted.

Mr. Randall—If the matter is in proper form I would move a reconsideration.

Hosted by Google

The Presiding Officer—The Senator from the thirteenth moves a reconsideration of the vote by which the motion was carried. Are you ready for the question? Those in favor will say Aye; those opposed, No. The Ayes have it, and the motion is carried.

Mr. Randall—I now move that the motion be laid upon the table.

The motion to lay on the table was agreed to.

Mr. Wheeler—I move that we take a recess until two o'clock.

Mr. Sheley—I hope that motion will not prevail. I move to amend, making it half-past one.

The Presiding Officer declared the Senate, sitting as a Court of Impeachment, adjourned until half-past one o'clock, and vacated the Chair.

Friday, P. M., April 12, 1872.

The Presiding Officer entered the Chamber at half-past one o'clock and called the Senate to order. The Managers on the part of the House, and the respondent and his counsel, soon after entered and took the seats assigned them.

The Secretary called the roll and announced a quorum of the Senate present.

Mr. Manager Grosvenor—Mr. President, the Managers on the part of the House have prepared in form the order, the substance of which was before the Senate before its reeess, and beg leave to ask the adoption of it in substance.

The Secretary read the order, as follows:

Ordered, That the Managers on the part of the House be allowed to take the testimony of any person or persons being or residing out of this State, before any officer or person in such other State authorized to administer oaths; and such testimony shall be reduced to writing, signed by the witness, and duly certified by the officer or person taking the same, and

Hosted by Google

returned, by mail or otherwise, sealed, to the Secretary of the Senate; and the same, when so taken, certified, and returned, may be read in evidence on the trial of this case, with the like force and effect as if the witnesses examined were personally present; and the party so taking the same shall give the opposite counsel two days' notice by mail, in writing, of the time, place, and name of the person or persons to be examined, when and where said counsel may appear and cross-examine said witness if they see fit; and such cross-examination shall at the same time and in like manner be taken, returned, and used in evidence as aforesaid.

Mr. Romeyn—I move the adoption of the order.

The Presiding Officer—The Senator from the First moves the adoption of the resolution. Have the counsel anything to say?

Mr. Shipman—Mr. President, I did not hear that the order gave the right to the respondent to take depositions out of the State; I was not listening very closely to the reading of it.

The Secretary again read the order.

Mr. Shipman—Would they not so amend it so as to give either party the right to take testimony out of the State by giving notice to the other party.

Mr. Grosvenor—I have no objection.

Mr. Shipman—I will offer the following amendment, which has been agreed to by the Managers:

Ordered, That either party be allowed to take the testimony of any person or persons being or residing out of this State, before any officer or person in such other State authorized to administer oaths; and such testimony shall be reduced to writing, signed by the witness, and duly certified by the officer or person taking the same, and returned by mail or otherwise, sealed, to the Secretary of the Senate; and the same when so taken, certified, and returned, may be read in evidence on the trial of this case, with the like force and effect as if the witnesses examined were personally present; and the party so tak-

Hosted by Google

ing the same shall give the opposite counsel two days' notice by mail, in writing, of the time, place, and name of the person or persons to be examined, when and where said counsel may appear and cross-examine said witness if they see fit, and such cross-examination shall, at the same time, and in like manner, be taken, returned, and used in evidence as aforesaid.

Mr. Romeyn—I move the adoption of the resolution as one of the standing orders of the Court.

The motion was agreed to.

The Presiding Officer—What is the further pleasure of the Senate?

Mr. Briggs—I have a resolution that I desire to offer.

The resolution was sent to the Secretary's desk and read, as follows:

Resolved, That the Secretary of the Senate be instructed to order printed one thousand copies of the daily journals of the Senate, sitting as a court of impeachment for the trial of Charles A. Edmonds; and one thousand copies of the "Impeachment Proceedings," for the use of the Senate.

Mr. Wheeler—I move to strike out the figures "one thousand" and insert "three hundred."

Mr. Briggs—Mr. President: I would say that I originally drew the resolution with the intention of only having three hundred, but at the suggestion of several Senators around me, I altered it to one thousand. I believe under the rule adopted by the Senate it was resolved that these proceedings should be forwarded to each member of the House during the progress of the trial, daily, and to the newspapers, and in order to meet the necessary demand, it was thought it would require at least that number.

The motion to strike out "one thousand" and insert "three hundred" was agreed to.

Mr. Wood—I move an amendment, making it five hundred.

The motion was agreed to, and the resolution as amended, adopted.

Hosted by Google

Mr. Wheeler—Mr. President, I have a series of resolutions here, that I desire to offer at this time, in order that the Senate, when it again convenes, may not be delayed.

The Presiding Officer—The Senator will send his resolutions to the Secretary's table.

The Secretary read as follows:

Resolved, That the President of the Senate be and he is hereby authorized to appoint four messenger boys to be employed in the Senate, sitting for the trial of an impeachment, whose compensation shall be two dollars per day each, and mileage at the rate of ten cents per mile coming from and returning to their places of residence by the ordinary traveled routes.

Mr. Waterbury—I think we had better amend that. I think two is enough to be bothered with.

The Presiding Officer—Will the Senator reduce his motion to writing.

Mr. Wheeler—At the suggestion of members, it was thought that the Managers would need one, the respondent one, and that two would be required on the part of the Senate and the Secretary. Of course I desire to make it as low as possible, but there is a great deal of running to do.

Mr. Cravath—I move that the Secretary be allowed one. I think that he should be.

The Presiding Officer—That includes one for the Secretary. Does the Senator from the Twenty-fifth insist upon his motion to amend?

Mr. Waterbury—Yes, sir. I have made it to insert there.

The Secretary read the amendment, striking out the word "four" and inserting the word "three."

The motion to amend was lost and the resolution in its original shape adopted.

The Presiding Officer—The Senator from the Twenty-seventh sends to the Secretary's table the following resolution.

The Secretary read the resolution, as follows:

Hosted by Google

Resolved, That Henry Seymour be and he is hereby appointed Sergeant-at-Arms of the Senate, sitting for the trial of an impeachment, whose compensation shall be ——— dollars per day, and traveling expenses, while serving process, and mileage at the rate of ten cents per mile coming from and returning to his place of residence by the ordinary traveled route; and the said Seymour is hereby authorized to appoint an Assistant Sergeant-at-Arms, whose compensation shall be three dollars per day, and the same mileage and traveling expenses as the Sergeant-at-Arms, and two Assistant Sergeants-at-Arms, to be designated by the Honorable Managers, whose duty it shall be to serve such process as may be placed in their hands for such purpose, with like compensation as herein provided for the other assistants.

Mr. Ball—I move that the blank be filled by the sum of five dollars per day.

Mr. Wheeler—I move to fill the blank by inserting the word "four."

The Presiding Officer—The question is upon the highest sum.

The motion to fill the blank with the word "five" was lost.

The Presiding Officer—The question now is upon filling the blank with the word "four."

The motion to fill the blank with the word "four" was agreed to, and the resolution adopted.

The Presiding Office—The Senator from the Twenty-seventh offers the following resolution.

The Secretary read as follows:

Resolved, That G. F. Hitchcock and Henry F. Walch, who have been duly elected Stenographers to the Senate, sitting as a Court of Impeachment for the trial of Charles A. Edmonds, receive as a compensation the sum of —— dollars per day.

Mr. Alexander—I move it be filled with five dollars apiece.

Mr. Wheeler—I move to amend by inserting seven.

Mr. Sheley—I would like to inquire whether they are to draw pay during the recess.

Hosted by Google

Mr. Wheeler—My idea was for the actual attendance.

Mr. Alexander—When I made the motion to fill it with five, I had in view the eighteen days' recess, and perhaps eighteen more before we get through with the trial.

Mr. Moffatt—I would like to be informed, by some parties that know, what the usual price is. It is something that I know nothing about, whatever.

The Presiding Officer—So far as I know, in proceedings in court it is not less than ten dollars per day, sometimes more.

Mr. Cravath—Then taking the time we shall have a vacation, probably five dollars will be a fair compensation.

Mr. Moffatt—I hope this amendment will be adopted, to pay these men what it is worth.

Mr. Wheeler—I withdraw the resolution for the present.

The Presiding Officer—The Senator from the Twenty-seventh offers the following:

The Secretary read as follows:

Resolved, That Bernard Rice be and he is hereby appointed fireman of the Senate sitting for the trial of an impeachment, whose compensation shall be ——— dollars per day, and the same mileage as provided for members of the Senate.

The Presiding Officer—The question is upon filling the blank.

A number of Senators—Three dollars a day.

Mr. Alexander—I move to amend, making it four dollars.

Mr. Jenks—I move that it be left until we get through, and then pay him what it is worth.

The motion to fill the blank with the word "four" was lost, and the blank filled with the word "three," and the resolution adopted.

Mr. Wheeler—I offer the following resolution:

The Secretary read as follows:

Resolved, That the compensation of Henry S. Sleeper, Sectary of the Senate sitting for the trial of an impeachment, be and the same is hereby fixed at the sum of five dollars per day,

Hosted by Google

and the same mileage as provided for the members of the Senate.

The resolution was adopted.

Mr. Sheley—I move that we take a recess until the 30th of April.

Mr. Shipman—Will the gentleman withdraw that for a moment; I wish to inquire whether any provision has been made for compelling the attendance of witnesses on the part of the respondent, and whether it is the duty of any officer to serve such process?

The Presiding Officer—I call the attention of counsel to Rule 21, which provides as follows:

Form of subpœna to be issued on the application of the Managers of the impeachment, or of the party impeached, or of his counsel:

In the name of the People of the State of Michigan:

To ——— ———, greeting:

You, and each of you, are hereby commanded to appear before the Senate of the State of Michigan on the —— day of ———, at the Senate chamber, in the city of Lansing, then and there to testify your knowledge in the cause which is before the Senate, in which the House of Representatives have impeached ——— ———.

Fail not.

Witness, ——— ———, and presiding officer of the Senate, at the city of Lansing, this —— day of ———, in the year of our Lord ——.

Mr. Sheley—I renew my motion to take a recess until the 30th of this month.

Mr. Manager Grosvenor—A question was just asked me and I am unable to answer it; I am not familiar with these rules —whether it is necessary that the Assistant Sergeant-at Arms shall be sworn in, and if so, whether it is necessary before the Senate adjourn.

The Presiding Officer—If it is necessary that he take the

Hosted by Google

constitutional oath, he can do it if we are not in session. The question is upon the motion of the Senator from the First.

Mr. Wood—I rise to a question of order: whether we can take a recess—whether we must not adjourn from day to day until that time.

The Presiding Officer—Does the Senator mean adjourn from day to day until that time, or adjourn until that time?

Mr. Wood—Adjourn—

Mr. Cravath—I would inquire if the resolution adopted did not provide for an adjournment until the 30th of April.

The Presiding Officer—Rule 2d is:

II. Upon such articles being presented to the Senate, the Senate shall forthwith proceed to the consideration of such articles, and shall continue in session from day to day (Sundays excepted) after the trial shall commence (unless otherwise ordered by the Senate), until final judgment shall be rendered.

That is the only thing in that in regard to the rule.

Mr. Romeyn (in his seat)—A recess is safe anyway.

Mr. Wheeler—It seems to me it is rather anomalous. I understand that a recess is an interval of a short time in the daily proceedings. I do not understand that this Court, being such, can take a recess to that day. If so, it is new in the history of preliminary proceedings to me. I think under the act, we should adjourn to that time. My idea of a recess, as applied to these proceedings, is an interval of a short time.

Mr. Moffatt (interrupting)—What is a short time,—fifteen minutes or two hours?

Mr. Wheeler—It don't make any difference.

Mr. Cravathh—I would inquire if the words "unless otherwise ordered" do not include the power to adjourn, or to take a recess, or to do anything else in that line.

Mr. Sheley—I think it is safer to take a recess,—much safer than to adjourn. I think we could take a recess for two hours, two days, or two weeks.

Mr. Wheeler—In order to prevent any question being raised

Hosted by Google

by the Managers or respondent's counsel, I will make a motion that we adjourn until ten o'clock of the 30th of April.

Mr. Sheley—I would like to know the difference between adjourning and taking a recess.

The Presiding Officer—The motion made by the Senator from the Twenty-seventh has the precedence over that of the Senator from the Second. The motion before the Senate is, to adjourn until the 30th day of April at ten o'clock.

The motion to adjourn was agreed to.

The Presiding Officer—The Senate, sitting as a Court of Impeachment, is now adjourned until the 30th day of April at ten o'clock in the forenoon.

Tuesday, A. M., April 30.

The President *pro tem.* called the Senate to order at ten minutes past ten o'clock.

The Presiding Officer—The Sergeant-at-Arms will make proclamation.

The Sergeant-at-arms—Hear ye! hear ye! hear ye! All persons are commanded to keep silence while the Senate of the State of Michigan is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Charles A. Edmonds, Land Commissioner.

The Presiding Officer—The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Messrs. Ball, Begole, Bennett, Briggs, Gay, Jenks, Mann, Neasmith, Price, Prutzman, Putnam, Romeyn, Sheley, Storrs, Waterbury, Wheeler, White, Wilcox, President *pro tem.*

Mr. Romeyn—Mr. President, I believe that several Senators are now in the chamber, who were not present at the time of the taking of the oath at the first session of this Court.

Hosted by Google

The Presiding Officer—The Senators who have not been sworn in will step forward, and I will administer to them the oath.

Senators Bennett, White, and Wilcox came forward and took the oath.

The Presiding Officer—I have received the following communication, which the Secretary will read.

The Secretary read as follows:

LANSING, April 30th, 1872.

Senator Emerson:—I ask leave of absence for myself for an indefinite time, on account of sickness.

I. M. CRAVATH,
per MRS. CRAVATH.

Mr. Sheley—I move that leave of absence be granted;

Which motion prevailed.

The Secretary read the following communication:

COLDWATER, Mich., April 26, 1872.

Hon. P. H. Emerson, President pro tem. of the Senate:

DEAR SIR:—Ever since the Sunday night after the adjournment, our constant attention has been required by one of our little girls, who for many days has lain at the point of death with the terrible and relentless spotted fever. Some of her symptoms are better, but her disease continues, and the final result is still very doubtful. I cannot leave her, at her present condition. I respectfully and urgently ask the Senate to grant me an indefinite leave of absence, and will go to Lansing as soon as it shall be safe to do so. I regret very much that I have to ask leave of absence from this important State trial, and hope I may soon be able to join you.

Yours truly,

C. D. RANDALL.

Mr. Waterbury—I move that leave be granted;

Which motion prevailed.

The Secretary read the following communication:

Hosted by Google

VERMONTVILLE, Mich., April 29, 1872.

Hon P. H. Emerson, Pres. pro tem., Senate:

DEAR SIR:—Am just home from New York, and find it impossible to leave to-day for Lansing; will leave to-morrow (Tuesday), and be present at earliest exercises of Wednesday A. M. I will read up the testimony, if any is taken, Tuesday.

Trusting my excuse for Tuesday will be sufficient, I am

Very truly yours,

HOMER G. BARBER.

Mr. Briggs—I move that he have leave of obsence for the day;

Which motion prevailed.

The Secretary read the following communication:

GRAND RAPIDS, April 29, 1872.

Hon. P. H. Emerson, President of the Senate:

DEAR SIR:—On account of the very severe and protracted illness of my son, George, I shall not be able to be pressnt to-morrow at the opening of the impeachment trial. If not able to report for duty in a few days (if the Senate so direct), I will present my resignation.

Very truly yours,

HENRY SEYMOUR,

Sergeant-at-Arms of the Senate.

Mr. Ball—Mr. President: I desire to state in reference to Mr. Seymour, that he has a very sick boy, and he has been obliged to be up with him constantly for some time, and he would like indefinite leave of absence, and report here as soon as he can.

The Presiding Officer—Do you make that motion?

Mr. Ball—I do.

Which motion prevailed.

The Presiding Officer—What is the further pleasure of the Senate?

Mr. Romeym—If it be now in order I move that the Sergeant-at-Arms be directed to notify the respondent and his

Hosted by Google

counsel that the Senate, sitting as a Court of Impeachment, are ready to proceed to trial.

The Presiding Officer—If there be no objection, the Sergeant-at-Arms will so notify them.

The Sergeant-at-Arms presently returned and announced that the respondent and his counsel were at the bar of the Senate.

The Presiding Officer—Conduct them to the seats assigned them.

The respondent and his counsel, Messrs. Shipman and McGowan, were conducted to the seats assigned them within the bar.

The Presiding Officer—Are counsel for the respondent ready to file their answer?

Mr. Shipman—Mr. President, the counsel for the respondent submit a resolution which I will ask to have read.

The Secretary read the motion, as follows:

In the Senate of the State of Michigan, sitting as a Court of Impeachment.

THE STATE OF MICHIGAN

vs.

CHARLES A. EDMONDS,

Commissioner of the State Land Office:

Whereas, The House of Representatives has the sole power of impeaching civil officers; and

Whereas, It does not appear that the articles of impeachment, presented against the respondent in this case, have been agreed to or adopted by the House, but it does appear they were not; therefore, on motion of the counsel for the respondent, it is

Ordered, That the articles and these proceedings be dismissed, and the Senate take no further jurisdiction of the case.

The Presiding Officer—Do counsel wish to be heard upon the resolution?

Hosted by Google

Mr. Shipman—Mr. President: Counsel for the respondent desire to be heard on the resolution. I desire to state, also, that it will be impossible to present it within the time allowed by the rule,—the thirty minutes allowed by the rule,—and I should therefore ask more time than that to get it before the Senate in a proper shape.

The Presiding Officer—If there be no objection, time will be allowed counsel.

Mr. Romeyn—I understand this offer made by counsel for the respondent that has just been read, to be in the form of a resolution. I ask for information, sir, whether that is a proper form in which a plea of this sort can come before the Senate for consideration. If so, I will move the adoption of the resolution for the purpose of having it before the Senate; if it is filed as a plea, I suppose they will hear it in that way.

The Presiding Officer—It is the opinion of the Chair that the respondent or the Honorable Managers, any of them, have a right to make a motion to the Court. We could not deny them that right.

Mr. Romeyn—That is the very point, sir,—whether this was resolution or a motion; I understand it to be in the form of a resolution.

Mr. Shipman amended his resolution so that it should appear as a motion.

The Presiding Officer—Are counsel for the respondent ready to proceed?

Mr. Shipman—Mr. President and Gentlemen of the Senate: Counsel for the respondent hesitate very much about making this motion; it is a motion that will dispose entirely of the impeachment matter. The respondent himself, in his letter to the House, reported by the committee to the House and there read, requested that a full investigation be made of the matters charged against him, and he made that request in good faith. He wished such an examination,—he desires it now, and this motion will prevent the accomplishment of that

Hosted by Google

end. Hence, as counsel for him, we hesitate about making it; but as we look at it, counsel have a duty to perform to the court or the tribunal before which they are trying a case, as well as to their client. We understand it to be the duty of counsel always to inform the court of any questions arising in the case, at whatever stage they may arise, which would oust the jurisdiction of the court, and thereby save the expense and trouble of a long and tedious trial or investigation, whatever the proceeding may be. It is the duty of counsel at once to do it. Now, the question which is involved here is one that we must carry along through the case. It cannot be waived, because it is a constitutional question, and a question of jurisdiction. It goes to the foundation of the whole proceeding, and we cannot investigate this matter thoroughly, as we necessarily must, without it suggesting itself to your minds if we should not raise it; and if it should suggest itself at any stage of the proceedings, you would hardly excuse counsel for the respondent for not raising it before. Counsel also have their duty, as citizens, to perform. Whenever an attempt is made to violate the organic law of the land, we consider it the duty of all men, counsel or otherwise, as citizens, at once to raise the question. Whenever an assault is made upon the Constitution it is the duty of all men to rally to its defense whenever and wherever it may be made. As citizens and as counsel it is our duty therefore to raise this question now and at once, that the proceeding may not become a precedent.

Again, it is the duty of the Senate to have the question raised now, for if they have no jurisdiction of the case it would be unseemly that they should usurp it. It, then, is the duty of all parties, as it seems to us, to have this question settled now. It is one that never can be waived. Should you proceed until you reach the end of this investigation, or trial, and finally determine that the respondent was guilty of any of the offenses charged in the articles, no judgment could be pronounced against him, because this question would confront you.

Hosted by Google

You cannot pronounce a judgment where you have no jurisdiction, and a motion in arrest of judgment after a verdict against him, would again present this question. So we consider that we are doing our duty, and only our duty to the Senate and to all parties, as well as to the respondent, in raising the question now, whatever may be his wishes. We, of course, sympathize with him, wish him to have a trial, and wish to have him declared, as we believe he will be, guiltless of the charges preferred against him. But this is not a tribunal sitting for the purpose of accommodating any man, nor is it an investigating committee: It is a court, the highest tribunal in the State, and its powers can only be invoked in a certain way, and that way is laid down and specified in the Constitution. An attempt to do it in any other way is a failure,—should be a failure.

And, Mr. President, if it is proper that the Senate should consider the effect of allowing this motion, that they may be relieved from all embarrassment as to its effect on the interests of the State, I will call attention to Section 8 of Article 12 of the Constitution of this State, an amendment which was adopted, I think, in 1862:

"The Governor shall have power, and it shall be his duty, except at such time as the Legislature may be in session, to examine into the condition and administration of any public office and the acts of any public officer, elective or appointed; to remove from office for gross neglect of duty, or for corrupt conduct in office, or any misfeasance or malfeasance therein, either of the following State officers, to wit: The Attorney General, State Treasurer, Commissioner of the Land Office, Secretary of State, Auditor General, Superintendent of Public Instruction, or members of the State Board of Education, or any other officer of the State, except legislative and judicial, elective or appointed, and to appoint a successor for the remainder of their respective unexpired term of office, and

Hosted by Google

report the causes of such removal to the Legislature at its next session."

So that full power is given the Executive to investigate the matter, and see that no injury is done to the State by an officer who ought not to remain in office.

If this motion should be granted,—if, by reason of the mistake of the House, we should be denied that investigation which the respondent in good faith requested, it is the intention of the respondent to at once request the Executive to have an examination made of these charges. He has full power—plenary power in the matter—to examine it fully, and at very much less expense to the State, so that Senators need not be apprehensive in regard to public interest in the matter; the State will be safe.

These, of course, are considerations which ought not to be given much weight by the Senate, upon a question of this kind, the only matter which should address itself to the consideration of Senators being, What does the Constitution require in the case? And having ascertained that, absolute obedience is demanded of all men, Senators included.

I will now call attention to the Constitution of this State upon the subject of impeachment. The power of the House, the power of the Senate, the duty of the Managers, all are specifically provided for in that Constitution, and the powers therein laid down to be exercised by these several bodies. It is an elementary principle, that power can only be exercised by the body upon whom it is conferred. There is no authority in the world that can exercise the powers that are there given to the House, or there given to the Senate, or there given to the Managers.

Article XII., Section 1, is as follows:

"The House of Representatives shall have the sole power of impeaching civil officers for corrupt conduct in office or for crimes and misdemeanors; but a majority of the members elected shall be necessary to direct an impeachment."

Hosted by Google

The House, then, are given the sole power of impeaching civil officers. The words are exclusive. Every other tribunal or body is excluded; no one can interfere with its exercise.

Section 2 provides—

"Every impeachment shall be tried by the Senate. When the Governor or Lieutenant Governor is tried, the Chief Justice of the Supreme Court shall preside. When an impeachment is directed, the Senate shall take an oath or affirmation truly and impartially to try and determine the same according to the evidence. No person shall be convicted without the concurrence of two-thirds of the members elected. Judgment, in case of impeachment, shall not extend further than removal from office, but the party convicted shall be liable to punishment according to law."

Section 3 provides that:

"When an impeachment is directed, the House of Representatives shall elect, from their own body, three members, whose duty it shall be to prosecute such impeachment. No such impeachment shall be tried until the final adjournment of the Legislature, when the Senate shall proceed to try the same."

Those are the provisions to which I now call attention.

The question that we are examining, then, is, as to the power of the House, and their duty in the matter, because unless the House have proceeded to get this matter before the Senate in the way required by the Constitution, there is no jurisdiction and the case must go down. If you have not jurisdiction, it is simply a usurpation of power to retain the case.

The Constitution of the United States is similar, as to the method of procedure and the powers to be exercised by each body.

Article 1, Section 2, Subdivision 5, is:

"The House of Representatives shall choose their Speaker, and other officers, and shall have the sole power of impeachment."

Hosted by Google

Section 3, Subdivision 6:

"The Senate shall have sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present."

The Managers are not provided for expressly by that Constitution, but it is the usual method of procedure in such cases to appoint them and they do it.

For what an impeachment is, I would refer to Bouvier's Law Dictionary, vol. 1, page 608.

"Impeachment. *Constitution, law, punishments.* Under the Constitution of the United States, an impeachment may be described to be a written accusation, by the House of Representatives of the United States to the Senate of the United States, against an officer.

"The presentment, or written accusation, is called articles of impeachment."

That, then, is the meaning of the impeachment proceedings. The House must accuse; nobody else can accuse. Written articles of impeachment must be found by the House, containing charges and specifications, adopted by them, and their authentication must appear upon them; and those are the articles upon which the officer is to be arraigned in the Senate and tried.

Impeachment is a mode of trial. The Constitution adopts it as a method of procedure by which to try official crimes. For this I cite Bayard on the Constitution, 116. This method was known and settled long before our Constitution was adopted, and hence becomes a part of the Constitution itself, the rule being that when foreign statutes are adopted into our legislation, a long and settled construction and practice under these statutes has been considered as silently incorporated into the acts. Sedgwick on Statutes, page 262, says:

Hosted by Google

"In regard to the word 'robbery,' used in an act of the United States, Mr. Justice Washington has said: 'If a statute of the United States uses a technical term which is known, and its meaning fully ascertained by the common or civil law, from one or the other of which it is obviously borrowed, no doubt can exist that it is necessary to refer to the source whence it is taken for its precise meaning.'"

The same volume, at page 426, says:

"Connected with this subject, another and very interesting question has arisen, which is, whether the interpretation of foreign laws is a question for the jury or for the court. In some cases it has been intimated that the interpretation of foreign law is matter of fact for the jury. 'This question in such a case,' says the Supreme Court of Ohio, 'is not what is the just and true interpretation, but what is the actual interpretation of the statute by the foreign tribunal. It is a matter of fact.' In the case in Massachusetts, turning on the construction of a statute of the State of Georgia, the statute itself was proven, and the depositions of eminent lawyers in that State, relating to the construction given there to the statute in question, was also read, and the court was requested to decide what was the law of Georgia in regard to the matter in hand; but the application was denied, and it was held to be a matter of fact, for the jury to decide, as to what had been the construction given by the courts in the State of Georgia to the statute before them. But, on the contrary, it has been expressly decided in Pennsylvania and Alabama that the interpretation of a foreign statute belongs to the court."

But whether it be a question of fact, or a question of law, the authorities all agree that the meaning given the terms used by the foreign tribunal is adopted as a part of the law.

It is well known that this proceeding came from the British Parliament, and I shall endeavor to show directly its meaning there. Upon this question, I wish also to cite Rawle on the Constitution, pages 209 and 210. Referring to this clause in

Hosted by Google

the Constitution of the United States, "The House of Representatives shall have the sole power of impeachments," and the third section of the same article, "The Senate shall have the sole power to try all impeachments," he says:

"Impeachments are thus introduced as a known definite term, and we must have recourse to the common law of England for the definition of them.

"In England the practice of impeachment by the House of Commons before the House of Lords, has existed from very ancient times. Its foundation is, that a subject, intrusted with the administration of public affairs, may sometimes infringe the rights of the people and be guilty of such crimes as the ordinary magistrates either dare not or cannot punish. Of these, the representatives of the people, or House of Commons, cannot judge, because they and their constituents are the persons injured, and can therefore only accuse."

1 Story on the Constitution, Sections 404 and 405, reads as follows:

"Sec. 404. These elementary explanations furnish little room for controversy; but they may neverthelesss aid us in making a closer practical application when we arrive at more definite rules."

"Sec. 405. In construing the Constitution of the United States, we are, in the first instance, to consider what are its nature and objects, its scope and design, as apparent from the structure of the instrument, viewed as a whole, and also viewed in its component parts. Where its words are plain, clear, and determined, they require no interpretation; and it should, therefore, be admitted, if at all, with great caution, and only from necessity, either to escape some absurd consequence or to guard against some fatal evil. When the words admit of two senses, each of which is conformable to common usage, that sense is to be adopted, which, without departing from the literal import of the words, best harmonizes with the nature and objects, the scope and design, of the instrument. When the

Hosted by Google

words are unambiguous, but the provision may cover more or less ground, according to the intention, which is yet subject to conjecture; or when it may include in its general terms more or less than might seem dictated by the general design, as that may be gathered from other parts of the instrument, there is much more room for controversy; and the argument from inconvenience will probably have different influences upon different minds. Whenever such questions arise, they will probably be settled each upon its own peculiar grounds; and whenever it is a question of power, it should be approached with infinite caution, and affirmed only upon the most persuasive reasons. In examining the Constitution, the antecedent situation of the country, and its institutions, the existence and operations of the State governments, the powers and operations of the confederation, in short, all the circumstances which had a tendency to produce or to obstruct its formation and ratification, deserve a careful attention. Much, also, may be gathered from contemporary history and contemporary interpretation, to aid us in just conclusions."

Cooley's Constitutional Limitations, 59: "But it must not be forgotten, in construing our Constitutions, that in many particulars they are but illegitimate successors of the great charters of English liberty, whose provisions, declaratory of the rights of the subject, have acquired a well-understood meaning, which the people must be supposed to have had in view in adopting them. We cannot understand these provisions unless we understand their history; and when we find them expressed in technical words, and words of art, we must suppose those words to be employed in their technical sense. When the Constitution speaks of an *ex post facto* law it means a law technically known by that designation; the meaning of the phrase having become defined in the history of constitutional law, and being so familiar to the people that it is not necessary to employ language of a more popular character to

Hosted by Google

designate it. The technical sense in these cases is the sense popularly understood, because that is the sense fixed upon the words in legal and constitutional history where they have been employed for the protection of popular rights."

We must then go to the source from whence this proceeding comes and ascertain the method of procedure before the Constitution was adopted; for the people were inventing out no new method,—they were simply adopting an old one.

May's Parliamentary Practice, 645 to 648: "It rests, therefore, with the House of Commons to determine when an impeachment should be instituted. A member in his place first charges the accused of high treason, or of certain high crimes and misdemeanors, and after supporting his charge with proofs, moves that he be impeached. If the House decree the ground of accusation sufficient, and agree to the motion, the member is ordered to go to the Lords, 'and at their bar in the name of the House of Commons, and of all the Commons of the United Kingdom, to impeach the accused; and to acquaint them that this House will in due time exhibit particular articles against him, and make good the same.' The member, accompanied by several others, proceeds to the bar of the House of Lords, and impeaches the accused accordingly.

"In the case of Warren Hastings, articles of impeachment had been prepared before his formal impeachment at the bar of the House of Lords; but the usual course has been to prepare them afterwards."

I apprehend it is quite immaterial whether they are prepared before or afterwards. That is a question of practice. "A committee is appointed to draw up the articles, and on their report the articles are discussed, and, when agreed to" [that is, agreed to in the House of Commons,—not agreed to by the Managers, nor agreed to by a committee] "are engrossed and delivered to the Lords, with a saving clause to provide that the Commons shall be at liberty to exhibit further articles from

Hosted by Google

time to time. The accused sends answers to each article, which, together with all writings delivered in by him, are communicated to the Commons by the Lords; and, to these, replications are returned, if necessary."

Now, that is the method adopted. After the Senate is informed that the House have directed an impeachment, and so report to the House, a committee is usually appointed, although it may be the Managers, who are directed to draw articles of impeachment and present them to the House. Upon their receipt by the House, the House go into committee of the whole upon the articles reported. Each article is discussed separately; sometimes they are amended, sometimes they are added to, sometimes an article is stricken out, and, finally, the committee report them back to the House. Upon their adoption they are engrossed, usually signed by the Speaker, and certified by the Clerk, and the Managers are then directed to take them and present them to the Senate.

However, we raise no technical questions. We do not care whether they are signed by the Speaker or by the Managers. Our objection is that the charges in these articles have not been settled and adopted by the House. That should have been done, for the House have the sole power to accuse the respondent at this bar. It is usual, then, after the respondent shall have answered,—I say *usual,* I can find no precedent to the contrary,—for the Managers to report his answer to the House, and for the House to agree upon a replication to be filed. I can find no authority even for the Managers to file the replication. That is a matter that does not arise here, however, at the present time; and I refer to it only for the purpose of showing that the whole power belongs to the House. I will read the balance of these proceedings through, to show the power of the House of Commons,—that they control and guide the whole proceedings:

"The Lords appoint a day for the trial, and in the mean-

Hosted by Google

time the Commons appoint Managers to prepare evidence, and conduct the proceedings, and desire the Lords to summon all witnesses who are required to prove the charges. The accused may have summonses issued for the attendance of witnesses on his behalf, and is entitled to make full defense by counsel.

"The trial has usually been held in Westminster Hall, which has been fitted up for that purpose. In the case of peers impeached for high treason, the House of Lords is presided over by the Lord High Steward, who is appointed by the Crown on the address of their Lordships; but at other times by the Lord Chancellor or Lord Speaker of the House of Lords. The Commons attend the trial as a committee of the whole House" [Necessarily that need not be done under our Constitution, although it is only a question of practice, because no impeachment can be tried until after the adjournment of the Legislature; and for that reason, possibly, the practice of the House filing a replication might be considered as abrogated by the Constitution, although I doubt it, because I doubt the right of the Legislature, or at least its propriety, to adjourn until after the issue is formed by filing replication, if it is intended to proceed to the trial of the matter. No trial can be had until the Legislature shall have adjourned. But in forming the issue, the House should be here], "when the Managers make their charges, and adduce evidence in support of them; but they are bound to confine themselves to charges contained in the articles of impeachment. Mr. Warren Hastings complained by petition to the House of Commons that matters of accusation had been added to those originally laid to his charge, and the House resolved that certain words ought not to have been spoken by Mr. Burke. When the case has been completed by the Managers, they are answered by the counsel for the accused, by whom witnesses are also examined, if necessary; and, in conclusion, the Managers, as in other trials, have been allowed a right of reply.

Hosted by Google

When the case is thus concluded, the Lords proceed to determine whether the accused be guilty of the crimes with which he has been charged. The Lord High Steward puts to each peer, beginning with the junior baron, the question upon the first article, whether the accused be guilty of the crimes charged therein. Each peer in succession rises in his place when the question is put, and standing uncovered, and laying his right hand upon his breast, answers, "Guilty," or "Not guilty," as the case may be, "upon my honor." Each article is proceeded with separately, in the same manner, the Lord High Steward giving his own opinion last. The numbers are then cast up, and, being ascertained, are declared by the Lord High Steward to the Lords, and the accused is acquainted with the result.

If the accused be declared not guilty, the impeachment is dismissed; if guilty, it is for the Commons, in the first place, to demand judgment of the Lords against him; and they would protest against any judgment being pronounced until they had demanded it. On the 17th of March, 1715, the Commons resolved, *nem. con.*, in the impeachment of the Earl of Winton—

"That the Managers for the Commons be empowered, in case the House of Lords shall proceed to judgment before the same is demanded by the Commons, to insist upon it that it is not parliamentary for their Lordships to give judgment until the same be first demanded by this House."

A similar resolution was agreed to on the impeachment of Lord Lovat, in 1746.

When judgment is to be given, the Lords send a message to acquaint the Commons that their Lordships are ready to proceed further upon the impeachment; the Managers attend; and the accused, being called to the bar, is then permitted to offer matters in arrest of judgment. Judgment is afterwards demanded by the Speaker in the name of the Commons, and pronounced by the Lord High Steward, the Lord Chancellor, or Speaker of the House of Lords.

Hosted by Google

The necessity of demanding judgment gives the Commons the power of pardoning the accused after he has been found guilty by the Lords; and in this manner an attempt was made in 1825 to save the Earl of Macclesfield from the consequences of an impeachment after he had been found guilty by the unanimous judgment of the House of Lords.

Thus the practice is clearly defined, as I have said, and thus the power of the House is seen to be absolute,—to control and manage it in all stages of the proceeding, to prosecute, to withdraw, or not demand a judgment in the end. It is for them to determine whether the accused shall be held to answer or not, and, in the end, whether he shall be punished or not. How much of the latter part of that practice in regard to pronouncing judgment may have been abrogated by our Constitution, I do not now state; I do not now go into the question.

Cushing on the Law and Practice of Legislative Assemblies, 2541–2550, says:

"In this proceeding the Commons are said to act as the grand inquest of the whole Kingdom, in investigating the subject of a supposed offense, and in agreeing upon and drawing up the articles of impeachment. While engaged in this preliminary step, the Commons proceed in the same manner and upon the same evidence as in relation to the ordinary matters of legislation. According to the usual practice, a member, in his place, first charges the accused with high treason, or some other high crime or misdemeanor, and after supporting his charges with proofs, moves that the person thus implicated be impeached. If the House deems the grounds of accusation sufficient, and agrees to the motion, the member by whom it was made is ordered to go to the Lords, 'and at their bar, in the name of the House of Commons, and of all the Commons of the United Kingdom, to impeach the accused, and to acquaint them that this House will, in due time, exhibit particular articles against him, and make good the same.' The member, thereupon, accompanied by as many others as are

Hosted by Google

necessary to go with a message, proceeds to the bar of the House of Lords, and impeaches the accused accordingly.

"The articles of impeachment have usually been prepared after the formal impeachment above described, though in the case of Warren Hastings it was otherwise.

"A committee is appointed to draw up the articles, who proceed accordingly, and on their report the articles are considered; when agreed to, they are engrossed and delivered to the Lords, with a saving clause, providing that the Commons shall be at liberty, if they think proper, to exhibit further articles from time to time.

"Upon the formal impeachment at the bar of the Lords, if the accused is a peeer, he is attached or restrained in custody, by order of the House of Lords; if a commoner, he is taken into custody by the Sergeant-at-Arms attending the Commons, by whom he is delivered to the Gentleman Usher of the Black Rod, in whose custody he remains, unless he is admitted to bail by the House of Lords, or otherwise disposed of by its order.

"Copies of the articles of impeachment are furnished by the House of Lords, to the accused, who answers each of them in writing, and copies of all such answers are communicated by the Lords, to the Commons, who return replications to the same, if necessary.

"The Lords appoint a day for the trial, and, in the mean time, the Commons appoint Managers to prepare evidence and conduct the proceedings. The witnesses, necessary to prove the charges, are summoned by the Lords, at the request of the Commons. The accused may have summonses issued, for the attendance of witnesses on his behalf, in the same manner. He is also entitled to be fully heard in defense by counsel. When the House of Lords is sitting as a Court of Impeachment, for the trial of a peer impeached of high treason, one of them is appointed by the Crown, on the address of the House, to preside during the trial, Lord High Steward. On other occasions the Chancellor, or Speaker for the time being, pre-

Hosted by Google

sides. The trial of an impeachment has usually taken place in Westminsher Hall, which has been temporarily fitted up for that purpose. When this is the case, the Lords proceed each day, in a body, from their own House to the place of trial, where they remain whilst the trial is proceeding.

"When the sitting for the day is brought to a close, they return in the same manner. If, during the progress of the trial, any question arises which it is necessary to consider and decide, the Lords withdraw for that purpose to their usual place of sitting, and there consider and determine the matter in question in the same manner as any other subject. When it has come to a decision it returns to the place of trial and makes the decision known, by its presiding officer.

"The House of Commons prosecutes an impeachment by the agency of Managers previously appointed for the purpose from among their own members. The Managers exercise the ordinary functions of counsel, and open the case, and examine witnesses to sustain the charges, in the same manner as on the trial of an indictment. When the case has been concluded on the part of the prosecution, the Managers for the Commons are answered by the counsel for the accused, who also call and examine witnesses for the defense, if they think proper, according to the usual course of criminal proceedings.

"When the case for the defense is closed, the Managers have the right to reply. The House of Commons proceeds to the place of trial, and there attends, in a body, each day, during the trial, as a committee of the whole, and returns to its House in the same manner. In the performance of their several duties, both the Managers for the Commons and the counsel for the accused are subject to the direction and supervision of the court, and are bound to conform to the rules of proceeding which are observed in other judicial tribunals. The Managers for the Commons are bound to confine themselves to the charges contained in the articles of impeachment.

"When the cause is concluded on both sides, the Lords withdraw to their own House, and there agree upon the questions

Hosted by Google

to be put, in order to determine whether the accused is guilty or not guilty. When the questions are agreed upon, which may not be the case under some days, the Lords proceed again to the place of trial, and there, in the presence of the accused, and of the House of Commons, each member of the court, beginning with the lowest in rank, is interrogated, in the manner agreed upon, by the Lord High Steward. The peers successively rise in their places, as the questions are put, and standing uncovered and laying their right hands upon their breasts, answer 'Guilty,' or 'Not guilty,' as the case may be, 'upon my honor.' The Lord High Steward, or other presiding officer, if a peer, then gives his own opinion, and proceeds to ascertain the result. The numbers being cast up and ascertained, are stated by the presiding officer to the Lords, and then the accused is acquainted with the result. The Lords then withdraw to their House and agree to a resolution accordingly, which is entered on their journals. If the accused is found guilty, they also agree upon the judgment to be rendered against him.

"If the accused is declared not guilty, the impeachment is dismissed; but if guilty, it then remains for the Commons to demand judgment against him if they think proper. But as the Commons commence a prosecution by impeachment at their own will and pleasure, so they may proceed with it or not, or suspend their proceedings at any stage, as they please. It is in their power, therefore, after a conviction, to refrain from demanding judgment against the accused, and thus, in effect, to extend a pardon to him. Without such demand the Lords cannot proceed to pronounce judgment."

That is the practice, then, in England, from which this proceeding was taken. It has been the practice there for centuries,—how many hundred years, I do not now remember,—but a well-known, well-settled practice; the duty of the Lords as well as the House of Commons, and the authority of the Managers being known and clearly established by law.

Hosted by Google

This proceeding has been adopted as somewhat analagous to the proceedings upon indictment, when it was the rule that no party should be held to answer for a crime except upon the presentment and indictment of the grand jury. The grand jury were to investigate the offense,—they were to find the offense, and the bill found by them was to be certified to the court. To make a valid indictment, four things were necessary: first, it must appear that it was presented to some court having jurisdiction of the offense charged; second, that it appear to have been found by a grand jury of the proper county or district; third, that it be a true bill, and signed by the foreman of the grand jury; fourth, that it describe the offense with sufficient certainty. Those are the qualities of an indictment. The grand jury, it would hardly be contended, would have the power to send a committee out to find a bill and to present it to the court; no more have the House the power to confer that right upon a committee of their body; nor can a law be passed in this State conferring that power, because it is a power vested in the judgment of the House, lodged in that tribunal, and cannot be taken from it.

It will be seen that the House of Commons act somewhat in the character of a grand jury, to investigate the offense, and agree upon and draw up articles of impeachment. Thus, in Stafford's trial, the Lord High Steward said to the accused: "You are prosecuted and pursued by the loud and dreadful complaint of the Commons, and are to be tried on the presentments made by the grand jury of the whole nation."—Howard State Trials, 1297.

The practice is entirely uniform in this regard, the duties of each being—

1st. The Commons prepare, agree, and pass upon the articles of impeachment;

2d. The Mangers prosecute and conduct the trial of the case;

Hosted by Google

3d. The Lords sit as judge and jury; the Managers prosecute and conduct the trial merely. There their duties end.

The proceedings in the United States are the same. The lower House, or House of Representatives, perform the functions of the House of Commons in England, and the Senate those of the House of Lords.

I refer now to Cushing on Law and Practice of Legislative Assemblies:

"SECTION 2554. In this country, whatever may be thought of the question, whether the proceeding by way of impeachment is a necessary incident to a legislative body or not, it is a question which we have no occasion to decide; inasmuch as this proceeding is a matter here of Constitutional provision, being mentioned and established by the Constitution of the United States, and of all the States in the Union. The provisions on this subject in the Constitution of the United States prevail most extensively, with some differences of minor importance, in the several States, and will be taken as a basis of the remarks which follow, touching impeachments in this country. The subject will be concluded by a short statement of the practice in proceedings of this sort.

"SECTION 2555. The subjects of this proceeding are, in general, declared to be the chief executive magistrate and other civil officers. Who are civil officers, liable to this process, can only be authoritatively settled by their being enumerated, but which has not been done by the Constitution of the United States, under which it has only been decided by the Senate, sitting as a Court of Impeachment, that members of the Legislature are not such civil officers.

"SECTION 2556. The power of impeachment is expressly conferred by all our constitutions upon the lower or more popular of the two branches of which the legislative body is composed, and which, from this function, in sometimes denominated the grand inquest of the State; to be exercised, not like

Hosted by Google

a grand jury, but in its ordinary legislative form of proceeding; and to be determined upon, unless otherwise specified, which is the case in some of the constitutions, by the ordinary major vote. This power, in the Constitutions of the United States, and of the greater number of the individual States, is conferred directly, and in the most appropriate phraseology, upon the House of Representatives; in others, notice is required to be previously given, and an opportunity to be heard in his defense, allowed by the party accused; in others, a greater than the ordinary majority is required to sustain articles of impeachment; and in others, it is provided that the impeachment of an offender shall operate, until a decision of it in his favor, to suspend him from the exercise of the functions of his office."

The charges of impeachment thus agreed upon, are to be preferred by the Lower House to the Upper, or Senate, as this branch is called, upon which is conferred, in express terms, the power to try all impeachments thus preferred. For this purpose the members of the upper branch, who may take their seats therein and be qualified as such at any stage of the proceedings on an impeachment, are generally required to be under an oath or affirmation similar to that taken by jurors on the trial of an indictment, well and truly to try the charge or charges embraced in the articles; and it is no objection to a member's sitting or acting in this capacity, that he has already participated, as a member of the Lower House, in agreeing to them. In some of the constitutions it is provided that when the chief executive magistrate shall be tried, the Court of Impeachment shall be presided over by the Chief or other presiding Justice of the Supreme Court. In that of Vermont, it is provided that the Senate, sitting as a Court of Impeachment, shall take to its assistance, for their opinion merely, the Justices of the Supreme Court; and in other constitutions it is provided generally, that there shall be no trial of an impeachment until after an adjournment of the Legislature.

Hosted by Google

The principle of unanimity which distinguishes trial by jury, does not prevail in the trial of impeachment; the votes of a majority only of the members constituting the Court, unless otherwise specified in the particular constitution, being necessary to a conviction.

In the Constitution of the United States, and in those of the greater number of the States, it is expressly provided that the concurrence of two thirds, at least, of the members present, shall be necessary to convict. The sentence, in cases of impeachment, commonly extends only to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the particular State or government in which the proceeding is instituted; and either or both of these may be inflicted in any given case. A conviction on impeachment is usually exempted from the operation of the ordinary pardoning power.

It is generally provided, in the American constitutions, that the party convicted on an impeachment trial shall, nevertheless, "be liable and subject to indictment, trial, judgment, and punishment according to law," as in other cases.

An impeachment is not discontinued or dissolved by an adjournment or dissolution of the Legislature in which it is pending, but may be brought forward, in the state in which it was left, and prosecuted in a succeeding Legislature.

The tribunal before which an impeachment is preferred may take such order as it thinks proper, according to law, for the appearance of the party accused, and may proceed to trial in his absence.

The following is a summary of the practice, in this respect, of the two Houses of the Congress of the United States:

"When an officer is known or suspected to be guilty of malversation in office, some member of the House of Representatives usually brings forward a resolution to accuse the party, or for the appointment of a committee to consider and report upon the charges brought against him. The latter is the usual

Hosted by Google

course; and the report of the committee ordinarily embraces, if adverse to the party, a statement of the charges, and recommends the resolution that he be impeached therefor.

"If the resolution is adopted by the House, a committee is thereupon appointed to impeach the party at the bar of the Senate; to state that the articles against him will be exhibited in due time, and made good before the Senate; and to demand that the Senate take order for the appearance of the party to answer to the impeachment. This being accordingly done, the Senate signifies its willingness to take such order; and articles are then prepared by a committee under the direction of the House of Representatives, which, when reported to and approved by the House, are then presented in the like manner to the Senate; and a committee of Managers is appointed to conduct the impeachment. When the articles are thus presented, the Senate issues a process summoning the person thus accused to appear before it to answer the articles. The process is served by the Sergeant-at-Arms of the Senate, and due return is made thereof under oath.

* * * * * * * *

"SECTION 2568. When the answer is prepared and given in, the next regular proceeding is for the House of Representatives to file a replication to the answer, in writing, in substance, denying the truth and validity of the defense stated in the answer, and averring the truth and sufficiency of the charges, and the readiness of the House to prove them, at such convenient time and place as shall be appointed by the Senate. A time is then assigned for the trial, and the Senate, at that time, or before, adjusts the preliminaries and other proceedings proper to be had, before and at the trial, by fixed regulations, which are made known to the House of Representatives and to the party accused. On the day appointed for the trial, the House of Representatives appears at the bar of the Senate, either in a body or by Managers selected for that purpose, to proceed with the trial."

Hosted by Google

Thus it clearly appears from the text-books which I have read that the sole power of impeachment which is vested in the House by the Constitution, means their power to pass upon and determine the offenses charged in the articles of impeachment,—the indictment against the respondent. The Managers have not this power; no committee can have this power, because it is confided to the judgment of the House, and cannot be delegated.

The history of this matter will be found, also, in Rawle on the Constitution, 210–15, just the same as I have here read. Also Story on the Constitution, 688–9 and 807 to 811, which is the same authority that I have read, all showing that that was the method adopted by the framers of the Constitution when they made that instrument. I will refer again to Bouvier, 608:

"The mode of proceeding in the institution and trials of impeachments is as follows: 'When a person who may be legally impeached has been guilty, or is supposed to have been guilty, of some malversation in office, a resolution is generally brought forward by a member of the House of Representatives, either to accuse the party, or for a committee of inquiry.'"

Then the proceedings follow,—which I will not read,—just as I have read.

The House then agree upon the articles of impeachment, and they are presented to the Senate by a committee appointed by the House to prosecute the impeachment; the Senate then issue process summoning the party to appear at a given day before them, to answer to the articles.

I read from Vol. IX., new American Cyclopedia:

"The proceedings, rules, and practices in cases of impeachment in this country are borrowed from the common law of England, excepting so far as they are affected by the Constitution or statutes of the United States, or of the several States. The Constitution of the United States declares (Art. 1, Sec. 2) that the House of Representatives shall have the sole

Hosted by Google

power of impeachment, and (Art. 1, Sec. 3) that the Senate shall have the sole power to try all impeachments. By Art. 2, Sec. 4, the persons made liable to impeachment are the President, Vice President, and all civil officers of the United States. The offenses for which a guilty person may be impeached are (Art. 2, Sec. 4) 'treason, bribery, and other high crimes and misdemeanors.' Art. 3, Sec. 3, declares that 'treason against the United States shall consist only in leving war against them, or in adhering to their enemies, giving them aid and comfort.' This would seem to be a precise definition of treason; but the House and Senate would still be free to determine what is meant by 'bribery,' and what offenses come within the words 'other high crimes and misdemeanors.' They would be probably guided, but not governed, by the rules of the common law and the practice of Parliament. The method of procedure, both in the United States and in a State, is substantially as follows: A resolution is offered by some member of the House charging the party impeached with his supposed offense, and either demanding at once his impeachment, or, what is more common, providing for a committee of inquiry. If the resolution is passed by the House, and if a committee of inquiry be ordered who report adversely to the accused, and in favor of an impeachment, and their report is adopted, a committee (the same or another) is instructed to impeach the accused before the bar of the Senate, and demand that that body make due provision for the trial, and inform the Senate that articles of impeachment will be prepared by the House and exhibited before the Senate. The same or another committee is instructed to prepare articles of impeachment, which, being reported to the House and approved by them, are transmitted to the Senate by a committee who are appointed to conduct the trial on the part of the House, and who are usually styled the managers of the impeachment.

Hosted by Google

"Due process, summoning the accused, then issues from the Senate, and is served by their Sergeant-at-Arms; and on the day therein appointed, the Senate resolves itself into a Court of Impeachment, all the Senators being sworn to do justice according to the Constitution and the laws. The person thus impeached is then called upon to appear and answer. If he makes default, the Senate proceeds *ex parte*. If he appears and denies the charges, and puts himself on trial (and he may appear by attorney), an issue is formed, and a time is appointed for the trial, which thereafter proceeds according to law and usage, and much in the same way as in common judicial trials. If any questions arise among the Senators, who now act as judges, they are considered with closed doors, and are decided by yeas and nays, and only the decision is made public."

Article I, Sec. 2, of the Constitution of the United States, provides that no person shall be convicted without the concurrence of two-thirds of the members.

The articles of impeachment are usually signed by the Speaker of the House. This, however, is not considered absolutely necessary, but it is certain that they must be adopted by the House in the form presented to the Senate, and they must be authorized by the House. A majority of all the members elected is necessary to direct an impeachment; but the agreeing upon and adoption of the articles, I admit, may be upon the usual majority. In the case of Andrew Johnson they were signed by Schuyler Colfax, Speaker of the House, and adopted by the House. In the 1st vol., Johnson's trial, page 10, I find the following: "Attest—Edward McPherson, Clerk of the House of Representatives," attached to those articles.

Further, as bearing upon this point, I state the remarks of Mr. Manager Bingham, found upon page 33 of the first volume. Mr. Johnson, a Senator, had asked the question in regard to filing the replication, and is answered as follows:

"Mr. Manager Bingham—Will the Honorable Senator allow me to suggest to him that we can only file the replication with

Hosted by Google

the consent and after consultation with the House of Representatives; and, therefore, the answer to his suggesstion is that as soon as answer is made here, according to the usage and practice in cases of this sort, we will respecfully demand a copy of the answer, that we may lay it before the House and report to this body as soon as the House will order us its replication. I have no doubt it will be done within one or two days after the answer is filed."

On page 84, the proceedings in the Senate will be found as follows:

"Mr. Manager Boutwell—Mr. President and Senators: I am charged by the Managers with presenting the replication which has been adopted by the House of Repsentatives."

I refer also to Wharton's State Trials of the United States, pages 252–6,—Blount's Case:

"On the 10th of July Mr. Sitgreaves moved the following resolution in the House of Representatives:"

The resolution was for a committee to prepare articles, for the resolution that he be impeached had been passed before. The resolution is as follows:

"*Resolved,* That a committee be appointed to prepare articles of impeachment against William Blount, a Senator of the United States, impeached by the House of high crimes and misdemeanors; and the said committee have power to sit during the recess of Congress, and to send for persons, papers, and records."

"A few days after the meeting of the next Congress, viz: on the 4th of December, 1797, Mr. Sitgreaves reported to the House of Representatives the proceedings of the select committee during the recess, with all the depositions which had been taken by them, which were read and ordered to lie on the table.

"On the 16th of January, a resolution was laid on the table directing the committee to report the articles of impeachment against William Blount. The consideration of this motion was postponed and never after called up.

Hosted by Google

"On the 25th of January, Mr. Sitgreaves reported the articles of impeachment, to be exhibited against William Blount, which were read and committed to a committee of the whole House.

"On the 29th, the House resolved itself into a committee of the whole on the said articles of impeachment; and, after making two amendments thereto, the committee rose, and the House concurred in the amendments, and the said articles were agreed to, as follows:"

Here follow the articles.

"The articles having been agreed to, it was resolved that eleven Managers be appointed by ballot, to conduct the said impeachment on the part of the House of Representatives."

I read this to show the practice in that case in 1797.

Judge Chase, an Associate Justice of the United States, was impeached in 1804. I would refer to the practice in that case, found in the Annals of the First Session of the Eighth Congress. A resolution was passed directing his impeachment; a committee was then appointed to appear and impeach him before the bar of the Senate. On the 13th of March (page 1171), this committee reported, and thereupon a committee was appointed to prepare and report articles of impeachment against him, which appear on page 1182 of the same book. The resolution is as follows:

"*Resolved*, That a committee be appointed to prepare and report articles of impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, who has been impeached by this House, during the present session, of high crimes and misdemeanors, and that the said committee have power to send for persons, papers, and records."

During the session of March 26, Mr. Randolph, from the committee on articles of impeachment, reported the articles of impeachment found upon page 1237. The session terminating the next day, no action was taken on the report. On the

Hosted by Google

13th of November the committee reported the same articles in substance to the House, adding thereto two new ones, which will be found on page 85 of the Annals of the Second Session of the Eighth Congress, which report was made the special order for December 3d. I desire to call attention to the proceedings then had, commencing on page 726:

"Mr. J. Randolph, from the committee appointed on the 6th inst., reported articles of impeachment against Judge Chase. They were nearly the same as reported at the last session, except the fifth and sixth articles, which were new ones.

"Mr. R. moved to refer them to a committee of the whole on Monday next.

"Mr. Elliot rose to move a more distant day, and to assign his reasons for the motion. It had been to him a subject of considerable regret that the present report had been so long delayed, and he had repeatedly examined his own mind to imagine reasons for the delay. Twenty-four days ago the gentleman who now presented the report announced to the House his conviction that all the time which our political existence would allow should be given to the person accused, for the purpose of making his defense; and he moved a recommitment of the report of the last session for the purpose of alteration or amendment. A solution of the difficulties which have occupied my mind upon this subject, said Mr. E., may perhaps be found in the report itself. If I understand it, it embraces accusations, the evidence of which repose in the breasts of the committee alone, as it has never been exhibited to the House. This course of proceeding may be parliamentary and proper, but it strikes my mind as possessing a very different character. At the last session, a voluminous body of evidence was reported, upon which the House decided the general question of impeachment. The committee appointed to prepare and report articles of impeachment possesses not the power of a committee of inquiry; the inquiry is already at an end; they are only to reduce to form the decision

Hosted by Google

of the house upon the evidence before them; and if they have proceeded to make a new inquiry, to obtain new evidence, and report new articles thereon, they have wandered beyond the limits of their duty. Nor am I furnished with that intuitive knowledge of right and wrong, in cases of this kind, which would be necessary to enable me to decide almost instantly upon a question of such magnitude. While it is our duty to grant a reasonable time to the person accused to make his defense, it is indispensably necessary to proceed, not only with deliberation, but with caution. He concluded by moving that the report be made the order of Thursday next.

"The question was taken on Thursday, as the most distant day, and lost."

On Monday, December 3d, page 728, the report was read, as follows:

Here follows the report.

On page 731 Mr. Elliott says: "It will be recollected, Mr. Chairman, by every member of the committe who was present at the close of the last session, that upon the report of the committee of inquiry recommending the impeachment of Judge Chase, no member but myself thought proper to deliver his sentiments. I feel no inclination to retrace the ground which I then occupied in solitude; especially as the opinions which I then advanced remain unaltered. Nor have I a disposition to embarrass the proceedings. I wish, indeed, to simplify them. But I feel it my duty to suggest that course of proceeding and that mode of decision which I believe to be demanded equally by our duty to the person accused, to our own consciences, and to our country; and I shall suggest them with confidence rather than with diffidence, because they are so extremely obvious. I believe it to be our duty deliberately to investigate the principles involved in the report, some of which are certainly novel, and to take distinct questions upon each general head of accusation. Because I think Mr. Chase ought to be impeached for two or three misdemeanors,

Hosted by Google

I cannot give my vote in favor of articles accusing him of eight high crimes and thirty or forty misdemeanors. If I should be so fortunate as to be seconded in the opinions which I entertain upon this subject, I will move to amend the report upon the table by striking out that part which relates to the conduct of Judge Chase on the trial of John Fries, and which is now comprised in the first article."

They then proceeded to consider the articles as follows—page 732:

"On the first article being read, Mr. Elliott moved to strike it out."

The Chairman said:

"The resolution to strike out the first section was in order, and was usual in the case of a bill, in order to decide on its merits; but in independent articles, like the present, it would be preferable to take the question on concurring, so that the opinion of the committee might be ascertained on each article.

"Mr. Smilie expressed an indifference as to the mode of decision, but he believed what he had suggested was conformable to all former rules and practices.

"Mr. J. Randolph, after a short pause, said the question of concurrence with the select committee, in his opinion, ought to be taken on each article separately; and for his part he had no objection to take it upon each separate member of each article if any gentleman wished it to be taken in that way.

"Mr. Nicholson, observing that there was no question before the committee, conceived that one ought to be presented for their decision.

"He therefore moved that the committee of the whole concur with the select committee, and agree to the first article; which being seconded, the question was put by the Chairman. A division was called for, and 78 members rising in the affirmative, it was carried without reverting to the question,—78 being more than a majority of the whole House had all the members been present.

Hosted by Google

"The second article being under consideration:

"Mr. Dawson—This mode of proceeding incurs some difficulty which might be prevented by the motion to strike out, as in the latter case, the principle upon which the article is grounded would be tested; and if the principle was adopted, the phraseology might be varied and amended as might be thought proper.

"The Chairman—The committee has already determined to proceed in a different manner; it therefore does not rest upon the discretion of the Chair.

"Mr. Smilie suggested the propriety of reading the evidence in support of each article, as there were many gentlemen here who were not present at the last session when the testimony was both read and printed.

"Mr. Findley seconded the motion.

"Mr. Nicholson—Reading the testimony will occupy the whole day. It constitutes the volume in my hand (a volume of apparently two hundred pages).

"Mr. Smilie would not call for its reading on his own account; he had already pursued the testimony; but there were several gentlemen now present who were not here at the last session, who perhaps have not had an opportunity of seeing the documents, and he believed gentlemen generally voted with more satisfaction on subjects with which they are well acquainted than on those where doubts of apprehensions are entertained. Besides, he deemed it more safe and dignified to proceed with caution and due deliberation on so serious a question as that of impeaching a persen holding one of the most important stations in the government.

"Mr. Nicholson—The manner of proceeding in the business of impeachment, at the last session, was to read such parts of the testimony, upon the call of a member, as related to the particular article under consideration. He recollected upon the impeachment of Judge Pickering, that the gentleman on the other side of the House, from New Hampshire, called for

Hosted by Google

reading the particular part of the testimony likely to extricate the officer impeached, or produce a conviction in the minds of others,—such as he felt himself. He hoped the same course of proceeding would be adopted by the committee, and such portions would, from time to time, be read as members required."

And thereupon they proceeded to examine the report of the committee, and to read the evidence bearing upon the articles adopted and reported by the committee, article by article, clear through. Now, I have wearied your patience this length of time by referring to that so far, for the purpose of showing that the preparation of the articles is a matter confined to the judgment of the House, and that the judgment of no other tribunal can be substituted in its place; they are to pass upon the offense and the probability of the evidence supporting them, and the propriety of having the officer arraigned at the bar of the Senate.

In the case that I have just read, that of Judge Chase, the first and fourth articles were amended; an adjournment was had until the next day, when they were again taken up and finally agreed upon. The House was then asked to concur with the committee, and they did so. I would respectfully refer the Senate to those proceedings, a part of which I have read, extending from page 726 to page 762 of the Annals of the Second Session of the Eighth Congress, which I will not weary the Senate by reading further. On December 5th, the House ordered the Managers to carry the articles of impeachment to the Senate. A copy of the answer was sent by the Senate to the House, which was referred to the Managers. On the same day Mr. Randolph, for the Managers, reported thereon.

I might also mention, Mr. President, that in the case of Andrew Johnson,—I state now from recollection, but I think an examination will show it to be so,—that a point of order was raised when Mr. Bingham asked the House for authority to file a replication to the answer of Mr. Johnson, anticipating that it would be formally before the body the next day, and they were anxious to get to the trial; he thought they might

Hosted by Google

as well then as any time agree upon the general replication; and the point of order taken by a member was that the Managers already had the power. Mr. Colfax, Speaker, ruled immediately otherwise. There was no question further raised about the position that the Managers had not the power,—that it must be done by the House.

For the case of Judge Pickering, Judge of the District Court of New Hampshire, I would refer to the Annals of the First Session of the Eighth Congress, page 315, where the same proceedings were had as in the other case. A report of the committee was had recommending that a resolution be adopted impeaching the accused. It was adopted, and thereupon a committee was appointed to prepare and present articles of impeachment against him before the House, which was done. And now I would refer specially to page 794 of the Annals of the First Session of the Eighth Congress:

"The House resolved itself into a committee of the whole on the report of the committee, of the twenty-seventh instant, appointed on the twentieth of October last, to prepare and report articles of impeachment against John Pickering, District Judge of the District of New Hampshire, who was impeached by this House, during the last session, of high crimes and misdemeanors."

"Mr. Tenney called for the reading of several depositions, which being read, Mr. T. said he had called for their reading to show that Mr. Pickering had sustained a respectable character, and that his recent conduct had arisen from insanity. For this reason he thought the articles of impeachment should not be agreed to by the House."

I call attention to that to show that the practice was adhered to there of leaving the matter to the judgment of the House. The whole matter as to the evidence and the propriety of presenting the offender for the crimes alleged, rested in the judgment and discretion of the House wholly. These articles were enrolled and signed by the Speaker, January 2d, 1804, first

Hosted by Google

being read. They were then carried to the Senate, and, January 13th, the Senate communicated to the House its action in regard to the impeachment, Aaron Burr being then Vice President. It is not necessary for me to follow the proceedings further in that case,—they are the same as in the others.

In the case of James H. Peck, District Judge of the U. S. Court of Missouri, the same proceedings were had, and I would refer, for a history of that proceeding, to the House Journal of the First Session, 21st Congress, page 29, and subsequent pages. The articles were reported by the committee, discussed, and adopted by the House.

The case of West H. V. Humphreys, Judge of the District Court of the U. S., of the District of Tennessee, May 6, 1867. I refer to House Journal, Second Session, 1861–2, where the same proceedings were had,—the same practice precisely,—the articles being adopted by the House.

The next case following would be that of Andrew Johnson. I refer to the Congressional Globe, 1st Session 40th Congress, page 792. Also, Congressional Globe, Part First, 2d Session 40th Congress, page 68; for further proceedings in the same matter, to page 1400, where the articles were discussed, and, finally, Feb. 24th, 1868, when Mr. Covode's resolution of impeachment was adopted. The articles at that time were not prepared;—they were afterwards prepared and presented, and thereupon a committee was appointed to inform the Senate, and a committee of seven was appointed to prepare articles of impeachment, as appears upon page 401; the articles were reported to the House, and are upon page 1542 of the Globe, and thereupon the House went into a committee of the whole upon the report of the committee, found upon page 1543, part second, of the Globe, and it was discussed at length, and each article voted upon separately and severally by the members. A substitute was adopted finally, containing several verbal changes in the articles, which will be found on pages 1613 and 1614. After they had gone through with the articles

Hosted by Google

presented by the committee, Mr. Jenks moved to amend by adding a new article, and finally, Mr. Butler moved to amend by adding a new article. I believe they were not adopted at that time, but they were subsequently, and finally presented as the articles adopted by the House against the accused.

In the State of New York the House of Representatives is called the Assembly; and by a reference to Art. 7, Section 1, of the Constitution of that State, we find the following: "The Assembly shall have the power of impeachment by a vote of all the members elected." I read from a work entitled Constitutions of the United States, belonging to our State Library. In the Second Assembly Journal of New York, of the year 1853, we find, in the case of John C. Mather, that resolutions of impeachment were reported June 22d, 1853; that the matter was again brought up June 28th, and the articles of impeachment presented; and on July 8th the articles were finally passed upon.

Again, in the Assembly Journal of N. Y., 1868, page 382, in the case of Robert C. Dorn, Canal Commissioner of the State of New York, articles of impeachment were reported to the House, and adopted by that body.

By a reference to the Kansas impeachment cases, in the case of Charles Robinson and two others,—one the Governor, another the Secretary of State, and the third the Auditor,—it will be seen that precisely the same proceedings were had. The committee reported to the House against the three parties, as appears in the report of the testimony and other proceedings in the trial, on page 7, the following resolution of impeachment, which was adopted:

"*Resolved,* That Charles Robinson, Governor; John W. Robinson, Secretary of State; and George S. Hillyer, Auditor of the State of Kansas, be and they are hereby impeached of high misdemeanors in office."

In that State, also, it appears by Article II., Section 27, of the Constitution: "The House of Representatives shall have

Hosted by Google

the sole power of impeachment. All impeachments shall be tried by the Senate."

In the State of Tennessee the Constitution is like ours in this:

Article 5, Section 1. The House has the sole power of impeachment.

Section 2. All impeachments shall be tried by the Senate.

Section 3. The House of Representatives shall elect from their own number three members, whose duty it shall be to prosecute impeachments. No impeachments shall be tried until the Legislature shall have adjourned *sine die*, when the Senate shall proceed to try such impeachment.

In the case of Thomas N. Frazier, Judge of the Criminal Court of Davison county, a resolution of impeachment was adopted by the House. Articles of impeachment were exhibited, signed by the Managers. I call the attention of the Senate to the shape in which they were reported. The proceedings commence on page 4 and are concluded on page 11, and on page 11, at the close, I find the following:

"The foregoing are the articles of impeachment, duly prepared by the House of Representatives of the State of Tennessee, against Thomas N. Frazier, Judge of the Criminal Court of Davison county, on the —— day of —— A. D. 1867," signed by James S. Mulloy, Speaker *pro tem.* of the House of Representatives,—indorsed when transmitted as follows, to wit: "Articles of impeachment preferred by the House of Representatives against Thomas N. Frazier, Judge of the Criminal Court of Davison county," further indorsed by the Clerk of the Senate. House message No. 60, Feb. 11, 1867, pages 369–70, words and figures of which said message No. 60 were as follows, to wit:

"HOUSE OF REPRESENTATIVES,
"*February 11, 1867.*

"Mr. Speaker, I am directed by the House of Representatives to transmit to the Senate the report of committee,

Hosted by Google

together with the articles of impeachment in the case of and against the Hon. Thomas N. Frazier, Judge of the Criminal Court of Davison county." Signed E. H. Gorson, Principal Secretary of the House of Representatives.

This report was made to the House, and adopted, as will appear on page 4, and, as I have said, their Constitution is precisely like ours.

And again, in the State of California: The Constitution says, Article IV, Section 18: "The Assembly shall have the sole power of impeachment, and all impeachments shall be tried by the Senate."

In the case of James H. Hardie, Judge of the 16th Judicial District, a resolution to inquire whether he should be impeached was introduced in the Assembly March 24th, 1862. I will refer to the Journal of the Assembly of California, 13th Session, page 427, which reads as follows:

"*Resolved,* That a select committe of five be appointed by the Speaker to inquire and consider whether articles of impeachment shall be presented by this House against James H. Hardie, Judge of the Sixteenth Judicial District of the State of California, for high crimes and misdemeanors in office, said committee to have power to send for persons and papers, and report to this House articles of impeachment against said James H. Hardie, if warranted by the evidence before them."

Unanimously adopted. On the 12th of April the articles were agreed upon, as appears on page 574.

On April 24th, supplemental articles were adopted in the same manner.

The Constitution of the State of North Carolina, Article 3, Section 1, Clause 3, has the following: "The House of Commons shall have the sole power of impeachment; the Senate shall have the sole power to try all impeachments."

See Revised Code of North Carolina, page 55. Articles of impeachment were exhibited against William W. Holden, Governor of North Carolina, December, 1870, and were signed

Hosted by Google

"Thomas J. Jarvis, Speaker of the House of Representatives," countersigned "W. W. Gaither, Clerk. Passed the 23d day of December 1870." I refer to pages 67 to 83 of Public Laws of N. C.

In Nebraska, also, articles of impeachment against David Butler, Governor, are signed by the Speaker of the House, and attested by the Clerk, and purport to be the act of the House. Butler's Trial, page 11.

In the case of John Gillespie, Auditor of Nebraska, as appears on House Journal of 1871, page 475, the House went into committee of the whole on the articles of impeachment, pages 483–484. The next House (1872) withdrew the charges, —*nolle prosequied* it. I state this upon the authority of the Secretary of State of Nebraska, in a letter, dated April 20, 1872, directed to Mrs. H. A. Tenney, State Librarian.

In the case of Alexander Addison, Presiding Judge of Common Pleas in certain counties in Pennsylvania, the trial being had in 1803, the same proceedings precisely were had. I refer the Senate to the trial of Addison, pages 6, 7, 8, 11, 13.

I will also call attention to the case of Judge Prescott, Judge of Probate of Middlesex county, Mass. The proceedings were the same, as appears by the report of his trial.

Thus it appears that the House is the body, and the only body, that can adopt articles of impeachment. As we have seen, this is supported by the elementary writers, both English and American; by the English and American usage in cases of impeachment; by the usage of those who took part in framing the Constitution of the United States, containing a similar impeachment clause to ours; by cotemporaneous construction, all uncontradicted by any author, authorities, case, or jurist for centuries.

The question now is, will the Senate depart from that mode of procedure which is incorporated in the Constitution of this State?

On motion of Senator Jenks, the Senate, sitting as a Court of Impeachment, took a recess till two o'clock.

Hosted by Google

Tuesday P. M., April 30, 1872.

The Senate was called to order by the President *pro tem.* at two o'clock.

The Secretary called the roll, and the Presiding Officer announced a quorum present.

The Presiding Officer—The counsel for the respondent will proceed.

Mr. Shipman—Mr. President, I was speaking of the duties of the House, the Managers, and the Senate, in impeachment matters. I had called the attention of the Senate, before the adjournment, to the resemblance between the proceedings by impeachment, and the proceedings upon indictments,—the articles of impeachment taking the place of an indictment, in a great degree,—and upon that I desire to call attention to the 6th American Law Register, page 257, new series. It is very difficult to find any authority, directly, upon any of the questions with reference to impeachment in this country, they have been so rare.

[Mr. Shipman here read an extract from a lecture delivered by Professor Theodore W. Dwight before the law students of Columbia College, New York.]

The duties, then, are these: The House are to prepare and agree upon the articles; the Managers are to prosecute the case; the Senate are to try it.

Aside from the authorities, the Constitution itself is plain upon the questions, and this is a jurisdictional question. It goes to the foundation of the whole proceedings. It would arrest the judgment if the respondent should be found guilty of the charges preferred; that is the only method by which he can be held to answer at all.

6 American Law Register, p. 645.

The question which is presented here would be somewhat analogous to the question presented to a court if an act should have been passed by the Legislature,—when we had the practice of proceeding by indictment in courts for crimes,—author-

Hosted by Google

izing a grand jury to delegate to a committee of three the power to find and present indictments to the court, against an individual. I claim, in that case, as well as in this, the power could not be delegated; that the Constitution having vested that power in a known tribunal or body, it must be exercised by that body. Now, I will call the attention of the Senate to what was done by the House in this case. I ask your atten- to the House journal for that purpose, and I believe that courts have held that we are at liberty to read legislative journals upon trials. Page 99 of the journal—I find that on March 22, 1872, a petition was presented to the House requesting that steps be taken to have an investigation of matters alleged against the respondent, and asking, if the charges of drunkenness and other misdemeanors be proved, that he at once be removed from the State Land Office. The charge in the petition, however, was drunkenness.

Mr. Grosvenor, by unanimous consent, offered a resolution as follows:

Resolved, That the petition and complaint of I. H. Bartholomew, R. C. Dart, and 24 others, citizens of the city of Lansing, against Chas. A. Edmonds, the Commissioner of the State Land Office, be and the same is hereby referred to a select committee of three, with instructions to inquire into the probable truth or falsity of the complaint, and report thereon to this House with all convenient speed the result of their deliberations, and whether the said Charles A. Edmonds ought to be impeached by this House, to the end that he may be removed from the office of Commissioner of the State Land Office; and if in their opinion the complaint is well founded, that they report to this House, in form, charges and specifications thereon, with the view of a trial before the Senate, as contemplated by Article 12, Sections 1, 2, and 3 of the Constitution of this State; and for the purpose of such inquiry and information, such committee is hereby authorized and empowered to send for

Hosted by Google

persons and papers, and examine witnesses touching the matter of such complaint.

Although a little hasty, perhaps, the resolution was not improper at that time. The step was rightly taken for charges to be made and presented to the House.

Thereupon Mr. Fenton moved to amend the resolution by making the committee five instead of three;

Which was accepted.

Mr. Huston offered the following as a substitute to the resolution:

Whereas, It is claimed and reported that the Hon. Charles A. Edmonds, Commissioner of the State Land Office, has been guilty of corrupt conduct in his office as such Commissioner, and has also been guilty of high crimes and misdemeanors;

And whereas, The dignity and honor of the State imperatively demand and require honesty, faithfulness, and good moral character in all of its public servants;

And whereas, The power to impeach any civil officer of this State is vested by the Constitution of said State in the House of Representatives; therefore,

Resolved, That a commitee of five be appointed to investigate the manner in which said Commissioner has conducted his said office, and whether he has been guilty of any offense or offenses that are impeachable, and that said committee have power to send for persons and papers, and to examine witnesses on oath, and that they report to this House with all convenient speed, by resolution or otherwise;

Which was not adopted.

It would seem, if one can construe these resolutions, that they intended to confine the action of the committee to the act of drunkenness alleged against him, as the resolution of Mr. Huston, requiring them to inquire whether he had been guilty of corrupt conduct in office, and of crimes and misdemeanors, was voted down; still, if it is possible that the other resolution was broad enough to cover that, I have but very

Hosted by Google

little to say, and care but little about it. On page 157, on the 27th of March, the committee reported their conclusion upon the matters referred, and charged in their report a good many things which were not charged in the petition; but the particular charge which they were to investigate, and report charges and specifications upon, they seemed to treat as trivial. I will not read the report which recommended the impeachment. On March 28th, page 105, a resolution was passed that a committee be appointed to inform the Senate of the fact, and that the House would, in due time, present articles of impeachment against the Commissioner of the State Land Office, and Managers were then elected. These proceedings are not extraordinary, although somewhat hasty,—not exhibiting that calm deliberation which usually characterizes such a movement.

On page 177 we find the "new departure"—a resolution introduced by Mr. Grosvenor, which is as follows:

"*Resolved*, That Ira R. Grosvenor, Benjamin W. Huston, Jr., and Lyman Cochrane, the Managers elected by the House in the matter of the impeachment of Charles A. Edmonds, Commissioner of the State Land Office, be and they are hereby authorized and instructed to prepare particular articles of impeachment, in the name of the House of Representatives and the people of the State of Michigan, against said Edmonds, under the resolution of impeachment, and present the same to the Senate for trial when the Senate shall be orgainzed to receive the same;"

Which was adopted.

Such a thing has not been known for five hundred years in any Legislative assembly, so far as I can ascertain, and I have looked very carefully. The "new departure" was this: In not reporting back to the House, and not getting any action of the House upon it; never asking their judgment upon it; never allowing them to pass upon the question as to whether the officer should be held to a trial upon the crimes charged,

Hosted by Google

nor whether there was probable proof to sustain the articles. Since that time the House have done nothing. There has been no quorum, I think, since. That is my recollection of it now. Perhaps there may not have been an adjournment, finally, until the 29th, but at all events the House never saw the articles. Nothing was ever done about them afterwards. During the vacation until the 11th the Managers were preparing these articles, and they were first presented to the Senate. There will be no dispute about that. The House never saw them, and the journal shows that. Now I wish to call attention to the articles themselves. Articles never were seen before in this form in any other case. Articles of impeachment are made in the name of the House of Representatives; they are exhibited by the House of Representatives in the name of the people. These articles are exhibited on behalf of the House of Representatives; they purport to be exhibited here by a committee or by somebody acting under a delegated authority. They are not the articles of the House, and do not profess to be, on the face of the articles themselves; and not only that, but after article eleven appears the following, showing that the Managers still claim the right to further add to the articles as they may deem necessary:

"And the Managers elected by the House of Representatives under and by virtue of the Constitution of this State, and authorized by the said Constitution and the laws of this State to manage on behalf of said House the trial of the impeachment of said Charles A. Edmonds, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles or other accusation under the said resolution of the House of Representatives for the impeachment of the said Charles A. Edmonds, Commissioner of the Land Office, and also of replying to his answer which he may make unto these articles herein preferred against him, and offering proof

Hosted by Google

to the same and every part thereof, and to all and every other article or accusation which shall be exhibited by them on behalf of said House, as the case shall require."

They claim authority to present other articles and charge other crimes and offenses if they choose to do so. I call the attention of the Senate to this to show that the whole theory is wrong. The Managers are not the House; they have mistaken their power. They supposed that they were vested with the full power of the House in this matter,—that the power of the House was transferred to them; and if the House could delegate it, they were right in so doing; but if it cannot be delegated they were wrong. I say the Constitution is clear on this question. It states where the power shall rest,—by whom it shall be exercised. The question is one that goes to the foundation of all proceedings based upon the articles; and hence, if the Senate should come to vote upon the fact of guilty or not guilty, this question would still arise to confront them. Unless they believe the Managers had the right to exercise this extraordinary power, which was never exercised before by Managers, they must still find not guilty. It will take twenty-two Senators, I believe, to convict. I will call attention to Mr. Lawrence's brief, contained in the American Law Register, p. 660.

[Mr. Shipman read the authority just mentioned.]

It is a rule that all questions going to the jurisdictions of courts may be raised at any time, and can never be waived. 4 Mich. Reports, page 177, Sec. 7. Where it appears from the record that the court has acquired no jurisdiction over the person of a defendant, he is not bound, as in case of mere irregularity, to move at the first opportunity, but he may take advantage of the defect at any time.

6 Mich., page 281. Jacob S. Farrand and another *vs.* Benj. Bentley. "Defects of jurisdiction cannot be waived by the parties."

Hosted by Google

6 Mich., page 193. People *vs.* Hezekiah Smith. "A person charged in the Recorder's court in Detroit with an offense against the general laws of the State, cannot waive his right to a trial by jury."

16 Mich., page 351. Wm. Hill *vs.* the People. "It appeared on a trial for murder that one of the jurors was an alien, but the fact was unknown to the defendant or his counsel until after the verdict.

"Let it once be settled that a defendant may thus waive this constitutional right, and no one can foresee the extent of the evils which might follow.

"But the whole judicial history of the past must admonish us that very serious evils should be apprehended, and that every step taken in that direction would tend to increase the danger. One act of neglect might be recognized as a waive in one case, and another in another, until the constitutional safeguards might be substantially frittered away. The only safe course is to meet the danger *in limine,* and prevent the first step in the wrong direction."

Now we take this position: that this power, vested as it is in the House, cannot be abridged, taken away, transferred, or in any way meddled with by any other tribunal—any other authority—by the Legislature itself. That body have this power, and it is confided solely to the judgment of the House. They are to act alone,—independent of all other parties. The Legislature cannot, by law, abridge the right of the House to impeach, or to try the impeachment. They are independent powers, not to be controlled by the opinion of the other House

[Mr. Shipman again adverted to Mr. Lawrence's brief.]

It is probable that no Senator supposed that the third section of the act of March 30th, 1872 was intended to confer upon the Managers this power of impeachment which they have attempted to exercise.

I will call the attention to the third section of the act, which reads as follows:

Hosted by Google

"SEC. 3. When an impeachment is directed, the House of Representatives shall elect from their own body three members whose duty it shall be to prosecute such impeachment, and the House of Representatives are hereby authorized to empower the said Managers to prepare and present articles of impeachment in accordance with the resolutions of said House."

The first three lines are in accordance with the Constitution; the balance is made entirely out of new cloth. It is not warranted, nor is there any authority for it in the Constitution. I do not suppose that the House or any of the Senators supposed that they were by that act conferring upon the Managers the power to prepare and present whatever articles, and put in such charges, as they had a mind to. The act gives them authority to prepare and present impeachment articles; but it was not intended to give them the power to present them to the Senate, but to the House.

The Senate will see that where they are to present them is not mentioned; and the act being silent as to which body they are to present them to, we can only presume that the common and parliamentary rule was contemplated; and by that they must and should have presented them to the House. I know nothing as to the intention, only as I read it from the law. It seems to me the law should be specific on that, and if it was intended they should be presented to the Senate, it should have stated, they may have the power "to prepare and present articles of impeachment to the Senate in accordance with the resolutions of said House," and thus have brought attention directly to it. It does say that, and hence I can only presume that Senators voted for it presuming they were to be presented to the House, and by it adopted. But I say if it were otherwise, the law would be wholly inoperative, for the Constitution is imperative, and says that the power shall remain in the House. They cannot delegate it to any other body with or without the aid of the Senate.

Hosted by Google

Judicial powers vested in the courts by the Constitution cannot be conferred on notaries public,—Chandler *vs.* Nash, 5 Mich., 409; or upon circuit court commissioners,—Walby *vs.* Callender, 8 Mich., 430; and Wm. Clintock *vs.* Laing, 19 Mich., 300.

The reason is plain, because the Constitution has specified by whom this power shall be exercised, and there it must remain.

The House cannot divest itself or be divested of its real powers; they cannot be delegated to an inferior authority.—Sedgwick on Statutory Constitutional Law, 164–6.

Nor are these speculative or abstract questions. Speaking of what comes in the scope of them, we find this principal presented in a large class of cases, which I am about to examine. I read from Sedgwick on Statutory Constitutional Law:

"And first, of cases where the Legislature has sought to divest itself of its real powers. Efforts have been made, in several cases, by the State Legislatures, to relieve themselves of the responsibility of their functions by submitting statutes to the will of the people in their primary capacity. But these proceedings have been held, and very rightly, to be entirely unconstitutional and invalid. The duties of legislation are not to be exercised by the people at large. The majority governs, but only in the prescribed form. The introduction of practices of this kind would remove all checks on hasty and improvident lesiglation, and greatly diminish the benefits of representative government. So when an act to establish free schools was, by its terms, directed to be submitted to the electors of the State, to become a law only in case a majority of the votes were given in its favor, it was held in New York that the whole proceeding was entirely void. 'The Legislature,' said the Court of Appeals, 'has no power to make such submission, nor had the people the power to bind each other by acting upon it. They voluntarily surrendered the power when they adopted the Constitution. The government of this

Hosted by Google

State is democratic, but it is a representative democracy, and in passing general laws the people act only through the Legislature.' In Pennsylvania, in the case of an excise statute, the same stern and salutary doctrine has been applied. In some of the more recent State constitutions, this rule has been a part of the fundamental law. So in Indiana the principle is now framed into a constitutional provision which vests the legislative authority in the Senate and House of Representatives, and declares that 'no law shall be passed, the taking effect of which shall depend upon any authority except as provided in the Constitution.' Under these provisions, it has been held that so much of an act as relates to its submission to the popular vote was null and void."

For the same reason that a Legislature cannot return or throw back upon the people the duty of making laws, its powers cannot be delegated by it to any inferior authority. "It will not be contended," says Marshall, C. J., in the Supreme Court of the United States, "that Congress can delegate to the courts, or to any other tribunals, powers which are strictly legislative."

This is as to the general power of the Legislature to delegate its authority; but it is a well-established rule that all bodies on whom powers are conferred must exercise them. When a power is conferred on one, it cannot be exercised by two; and where it is conferred upon two, it cannot be exercised by one. It must be exercised by the party on whom the law confers it, and in which it is vested. This same general principle applies in legislative proceedings as well as in any others.

I call attention to Cooley's Constitutional Limitations, page 116.

"Those matters which the Constitution specifically confides to him (the Executive) the Legislature cannot take from his control."

"One of the settled maxims in constitutional law is, that the power conferred upon the Legislature to make laws can-

Hosted by Google

not be delegated by that department to any other body or authority. Where the sovereign of the State has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the Constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been intrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust."

He says "those powers cannot be delegated." The same reasoning precisely, and the same rule obtains, where powers are delegated to either one of the bodies separately. Where it is confided to the judgment, wisdom, or patriotism of that body separately, it cannot be exercised by any other body, nor can the power be delegated; the judgment of no other men or body can be substituted.

In the case of Collins *vs.* The People, 3d Mich., the old Supreme Court of this State were unanimous that the power to make laws could not be delegated by the Legislature to the people themselves, the original source of power. "Where any power is conferred upon either department of the government, it is conclusive and absolute, and cannot be delegated."

It is just the same where the power is conferred upon the Executive. I will call attention to the remarks of Mr. Howard, to be found in the 3d volume of Andrew Johnson's trial: "They regard it as settled doctrine needing no special recognition, though it is clearly recognized in the second section, requiring the President to report the causes of a suspension, and the action of the Senate upon them, before the suspension can result in a removal. Such, I say, was the theory of the bill; the fundamental idea upon which it was framed was that the power of removal belonged by the Constitution to the President and the Senate exclusively, and not to the President

Hosted by Google

alone. If it belongs to the President alone, then the first section, including the proviso, and the second section, providing for a suspension before removal, are totally void for unconstitutionality, for Congress cannot meddle with a power that belongs solely to him. Such being manifestly the theory of the bill, such the undoubted opinion of both Houses, it would have been strange indeed for them to abandon the very principle upon which the bill was framed, and to recognize in the proviso the odious claim of the President to exercise the sole power of removal of the then existing heads of departments. It was an uncalled-for renunciation of the very power under which they could act, if they could act at all, on the subject."

The same rule obtains here. The Legislature cannot meddle with the powers that belong solely to the House. On page 115 of Cooley's Coustitutional Limitations, I find this:

"That such powers as are specially conferred by the Constitution on the Governor, or any specified officer, the Legislature cannot confer upon any other officer or authority, and from those duties which the Constitution require of him he cannot be excused."

Now, I ask the question, Can a committee, or can Managers, possess powers of impeaching civil officers? They have the power under this law, or they have not. If they have the power, it no longer rests in the House. The power is passed to them, and is vested in them, and it cannot be taken from them without a repeal of the law.

Let me suppose, for a moment, that the Managers shall choose to not file articles of impeachment when asked by the House; suppose they consider the offense trivial, or for any other reason they will not file the articles, what will the House do? How can it get back its powers? Only by repealing the law. If the Executive should veto the repeal, it would take a two-thirds vote to pass it over the veto; and thus the House could only exercise a power vested by the Constitution in a majority of the members elected, by a two-thirds vote. But

Hosted by Google

can the House abrogate its powers? I deny it. If any part can be delegated, all can. When you admit any part of it may, you admit the whole can. As to how much shall be delegated is a question of policy only.

Now I ask, can this power be turned over entirely to the Managers? If not, can any part of it? The heart of the power is attempted to be executed by the Managers,—the part to say who shall or who shall not be presented to the Senate for trial. Take that out, what is left? The King could not impeach! Where do the Managers get this more than regal power? Can the people take this power, which is so plain in the Constitution, from the Legislature? I think not. There is no power safe in the Constitution if they can do that. The bounds of power, under that Constitution, are fixed in the instrument itself. It not only says that the House shall have the power to impeach, but that it shall have the sole power. Can you ride over that language and give away the power? The Senate are entirely excluded from participation in it. To the House is given the "sole power." The word "sole," as here used, means "single; being or acting without another; only." (Webster's Dict. "Sole.") It was intended by this to compel the House to act alone in the matter and exclude all interference by the Senate. To the Senate is given the sole power to try impeachments, although the language is not so exclusive as in the clause in regard to the House. Can the House interfere with the action of the Senate in the matter? Can you not act wholly independent of them? Could the Legislature itself—both Houses with the addition of the Governor—interfere with your judgment? I apprehend not. It is monstrous to suppose anything of the kind. And yet, the power is not given to you any more exclusively than who shall be impeached is to the House. The language is not so exclusive, but the Senate is entirely independent of the House. Suppose that a law should be passed giving to the Senators a right to appoint a committee and bring in a verdict in this matter,—

Hosted by Google

giving that power to the Senate: Could the Senators go home, as did the House, leaving it with the committee? What would be the effect of such a finding? Is it necessary to take the time of the Senate arguing such a proposition as that? But that is exactly the proposition here, for this law delegates to a committee of the House the power to impeach civil officers. In the case of Gillespie, to which I have heretofore called the attention of the Senate,—the Nebraska case,—charges were presented by the House and withdrawn afterwards, showing it was left to their judgment as to what they would do and when they would do it.

I will call the attention of the Senate to the opinion of Senator Sherman, in the Andrew Jackson impeachment case, vol. 3, p. 15:

"And, above all, we must guard against making crimes out of mere political differences, or the abuse of the freedom of speech, or of the exhibition of personal weakness, wrath, or imbecility. We do not confer the office of President, and may not take it away except for crimes or misdemeanors. The people alone may convict and condemn for such offenses. The Senate may not trespass upon the jurisdiction of the people without itself being guilty of usurpation and tyranny. Better far to submit to a temporary evil, than to shake the foundations of the civil superstructure established by the Constitution, by enlarging our jurisdiction so as to punish, by removal from office, the utmost latitude of discussion, crimination, and recrimination, which, so long as it is unaccompanied by unlawful acts, is but the foolish vaporing of liberty.

"The House of Representatives of the Thirty-ninth Congress refused to rest an accusation upon these speeches, and so of the present House, until other acts of a different character induced these articles of impeachment."

The power being in the House and they having passed upon a matter confided to their judgment, he did not propose to review it.

Hosted by Google

In the January number of the "Atlantic" for 1867, page 89, I find a few lines which I desire to read on the question raised here. Although this is only a magazine article, it is entitled to some force. The question they are discussing is for what offenses officers may be impeached:

"What then, is the meaning of 'high crimes and misdemeanors' for which a President can be removed? Neither the Constitution nor the statutes have determined. It follows, therefore, that the House must judge for what offenses it will present articles, and the Senate decide for what it will convict. And from the very nature of the wrongs for which impeachment is the sole adequate remedy, as well as from the fact that the office of the President and all its duties and relations, are new, it is essential that they should be undefined; otherwise there would be no security for the State.

"But it does not by any means follow that, therefore, either the House or the Senate can act arbitrarily, or that there are not rules for the guidance of their conduct. The terms 'high crimes and misdemeanors,' like many other terms and phrases used in the Constitution, as, for instance 'pardon,' '*habeas corpus*,' '*ex post facto*,' and the term 'impeachment' itself, had a settled meaning at the time of establishing the Constitution. There was no need of definition, for it was left to the House as exhibitors, and the Chief Justice and the Senate as judges of the articles, to apply well-understood terms, *mutatis mutandis*, to new circumstances, as the exigencies of state, and the ends for which the Constitution was established, should require.

"The subject-matter was new. The President was a new officer of state. His duties, his relations to the various branches of government and to the people, his powers, his oaths, functions, duties, responsibilities, were all new. In some respects old customs and laws were a guide; in others, there was neither precedent nor analogy. But the common-law principle was to be applied to the new matters according to

Hosted by Google

their exigency, as the common law of contracts and of carriers is applied to carriage by steamboats and railroads, to corporations and expresses, which have come into existence centuries since the law was established.

"Impeachment, the presentment of the most solemn grand inquest of the kingdom, had been in use from the earliest days of the English constitution and government.

"The terms 'high crimes and misdemeanors' in their natural sense embrace a very large field of actions. They are broad enough to cover all criminal misconduct of the President,—all acts of commission or omission forbidden by the Constitution and the laws. To the word 'misdemeanor,' indeed, is naturally attached a yet broader signification, which would embrace personal character and behavior as well as the proprieties of official conduct. Nor was, nor is there, any just reason why it should be restricted in this direction; for, in establishing a permanent national government, to insure purity and dignity, to secure the confidence of his own people, and command the respect of foreign powers, it is not unfit that civil officers, and most especially the highest of all, the head of the people, should be answerable for personal demeanor.

"The term 'misdemeanor' was likewise used to designate all legal offenses lower than felonies,—all the minor transgressions, all public wrongs not felonious in character. The common law punished whatever acts were productive of disturbance to the public peace, or tended to incite the commission of crime, or to injure the health or morals of the people, such as profanity, drunkenness, challenging to fight, solicitous to the commission of crime, carrying infection through the streets, —an endless variety of offenses."

* * * * * * * *

In fine, it may almost be said, that for a President to have done anything which he ought not to have done, or to have left undone anything which he ought to have done, is just

Hosted by Google

cause for his impeachment, if the House by a majority vote feels called on to make it the ground of charges, and the Senate by a two-thirds vote determines it to be sufficient. For the safety of the State is the supreme law, and these bodies are the final judges thereof.

It follows that the House make the charges, for what offenses they will, and the Senate decide. The Senate will remember, also, that the House have the power not to present articles against an officer, whatever he may have done. They have the power absolutely to pardon a man. I care not how great the offense may be, you cannot compel the House to bring articles of impeachment against him. If they say they have not charges enough to hold, it amounts to an acquittal. That is the only power there is under the Constitution of this State to pardon an official offense, and it cannot be any more interfered with than if the power was vested in the Executive. Can the Senate delegate to a committee powers upon which the judgment of the Senate is required? Can the Senate and House confer upon the committees appointed by each, power to make laws, and go home, leaving them to do it? The idea is preposterous, of course, and yet it is not more remarkable than the exercise of the power attempted in this case. For the power to make laws is not given in more exclusive terms in the Constitution than the power of impeachment. It is not more confided to the judgment of the two Houses than is the power to say who shall be impeached confided to one House. And it will be observed, also, that this business is to be done as other legislative business is done,—the charges to be supported as other charges are. The House need a committee when they are to make an investigation, and determine whether it is advisable to put an officer on trial. But the powers of the Managers are defined in the Constitution itself. They can have no other powers than those given them,—these exclude all other powers.

The question of construction of constitutional powers, I apprehend, you are too familiar with to require any extended

Hosted by Google

discussion. I will call your attention to Cooley's Constitutional Limitations, p. 64:

"Another rule of construction is, that when the Constitution defines the circumstances under which a right may be exercised or a penalty imposed, the specification is an implied prohibition against legislative interference with the condition, or to extend the penalty to other cases. On this ground it has been held by the Supreme Court of Maryland, that where the Constitution defined the qualifications of an officer, it was not in the power of the Legislature to change or superadd to them, unless the power to do so was expressly, or by necessary implication, conferred by the Constitution itself."

To give a familiar illustration of the construction of a statute, suppose it should read this way: "For administering an affidavit an officer shall be entitled to twenty-five cents;" that simply means that he shall not have any more than that; it is a limitation. So the powers of the Managers are specified by like language and they cannot exercise greater powers. Taken all together, the power of the House, and the power given to the Managers form one harmonious method of procedure,—each having its duties marked out. The House have the right to impeach. The Managers are the counsel in the matter.

I ask, is it safe or wise to substitute the heated deliberations of a committee for that of the House? The Constitution itself has given it to the House and marked out the power of the Managers. Would it be safe or judicious to substitute the judgment of a committee, some of whom are friendly to the measure which is introduced or friendly to the party against whom the accusation is made?

Story on the Constitution, Section 743, reads as follows:

"Upon the subject of impeachments, something has already been said in treating of that branch of the Constitution which delegates to the House of Representatives the sole power of impeachment. Upon the propriety of delegating the power it is unnecessary to enlarge. But the next inquiry natarally presented is, By what tribunal shall an impeachment be tried?

Hosted by Google

It is obviously incorrect in theory, and against the general principles of justice, that the same tribunal should at once be accusers and the judges; that they should first decide upon the verity of the accusation, and then try the offenders. The first object in the administration of justice is, or ought to be, to secure an impartial trial. This is so fundamental a rule in all republican governments, that it can require little reasoning to support it; and the only surprise is, that it could ever have been overlooked."

The next inquiry is by what tribunal the impeachment is to be tried? There has never been a question but that this power ought to remain in the House, where the Constitution has placed it, although that ought not to be a thing for the Court to be influenced by. The only question is, whether the Constitution has placed it there? If it has, that should be the end of it. In Hardy's case, in California, I believe that attorneys were employed, by the direction of the House, to conduct the trial before the Senate. If that was proper, and it was done in that case, I submit to the Senate if they could not as well confer on the attorneys the power to impeach, as upon the Managers? Their duties were precisely the same as those of the attorneys employed with them. The preparation of the articles of impeachment, and the getting of testimony before the House to support them, was simply committee work,—a method of getting it before the House that must have employed some agencies.

It is not necessary tbat the Legislature should be in session for a committee to work. If they can give them this power at all, why not authorize them to do it when not in session? Committees can perform their work as well when the Legislature is not in session as when they are. Would it not be advisable to have a standing committee of impeachment to prepare articles against an officer, when, in their opinion, there exists just cause for doing so? Now, if a committee can be appointed at all, it can be made a standing committee, and after they have gone all over the officers at the capital, they

Hosted by Google

can have a general commission, and go roaming over the State seeking what officers they may devour. Must this great, terrible power, so carefully guarded and restricted to the House, be put to such base uses? Why have the people planted it so firmly in the Constitution if they intended it should be used in that way? This power to impeach, and the proceeding itself, has somewhat fallen into disuse of late years. The old rule generally was, "Do we wish to get rid of this officer?" If they did, impeachment was a convenient means of doing it, but it was supposed to have had its day. Recently, however, it has revived; and at this time in several of the States are pending impeachment proceedings. I believe I have cited those that are pending and have not yet been decided. I will now call the attention of the Senate to the March number of the "Atlantic," pages 386–7, on this very question. Speaking of the impeachment in Louisiana, it says:

"Such is impeachment in Louisiana; it differs, rather in degree than in kind, from impeachment in the other Southern States. In the Arkansas case, one of the steps in the trial was the boarding in and nailing up of the Governor within the executive chamber by the impeachers.

"The prevalence of proceedings of this kind may be explained by the assumption of an extraordinary degree of corruption on the part of the vurious administrators impeached. But the difficulty with this explanation is, that in most of the States in which the proceedings have been begun, the whole State government is so hopelessly corrupt, that there is very little difference betwen one part and another. An effort on the part of the Legislature of any Southern State to reform the government out of pure love of virtue, is not a probable political movement. There is little to choose between the impeacher and the impeached. An impeachment trial in the Southern States is what it was predicted such trials would become,—nothing but a parliamentary device for getting rid of a political enemy.

Hosted by Google

"If the absurdity and wickedness of these mock trials at length convinces people of the adsurdity of high courts of impeachment, the result will be a fortunate one. Impeachment was an English process in vogue at the period when England was governed, not only nominally but really, by King, Lords, and Commons,—a period, too, when a public office was not a trust but private property. The courts were servants of the Crown, and of course in political sympathy with the power to which they owed their existence. In such a state of society the trial of an official for high crimes and misdemeanors was not simply a trial,—it was a grave political event, and there was great propriety in bringing the accused before a large and powerful court. And it should be remembered also that the House of Lords in England, unlike the Senate in the various States and the United States, has always been a judicial body, with legal traditions. All these considerations are made in favor of the English system for England at the time of its introduction here. In America, on the other hand, high courts of impeachment are as out of place as trials for treason. The feeling that the government is a body apart from the people, with proceedings of its own, responsibilities of its own, has no place in the modern order of society. With us an office is a theory, and should be, in fact, a trust; and there is no more reason that public trustees, who have violated their trusts, should be prosecuted in a high court of impeachment than that such a court should be organized for the trial of men like Fisk and Gould. Impeachment is frequently spoken of as if intended for the trial of a peculiar class of crimes. School-boys are taught that impeachments are applied not altogether to strictly legal offenses, but to those of a political nature, of an extraordinary character, and to misdemeanors in office and violations of public trust which can scarcely be provided for beforehand, or defined by positive law, or judged by technical rules. For impeachers, this is certainly a very convenient explanation, inasmuch as

Hosted by Google

it obviates all difficulty of definition by declaring at the outset the impossibility of any definition at all. But a tribunal which tries crimes neither legal nor political has too vague a jurisdiction for our day. Political mysteries belong to the past. Crimes of such an extraordinary character that they cannot be provided for beforehand, or defined by positive law, may safely be left to be dealt with as they arise."

Impeachment then is an evil, and the question is, what is to take its place? Now there are many considerations in that, which will at once address themselves to the common sense of the people living in our day. Uunless it be a very extreme and extraordinary case, the power should not, in any case, be exercised. The courts are open, and if any of the offenses which are charged against this respondent in these articles have been committed by him, why do they not take him into court? Why not prosecute him there for them? Why put the State to the expense of this trial? I can safely say it will not last as long as the Warren Hastings, which lasted some six years,—but it will last some considerable time, and it would be much cheaper and just as effective to try him in the courts.

These questions which I have presented touch the fundamental law of the State. They are questions relating to the organic law. I stand here with all due deference to this high presence, but not hesitating to say that for the Senate to go on and try this case would be inflicting an injury upon the State greater than twenty Commissioners could do. It would be violating the organic law of the State, which it is their duty to support; and, furthermore, I submit, if a judge should attempt to exercise his authority and entertain jurisdiction of a case obtained by such a violation of the Constitution, he could be impeached and convicted? I am not putting this too strong, because it is an important question, affecting the Constitution of this State. It is by no means a technical question. It is a question to which attaches additional importance from the fact that this is the first trial in the State. It will

Hosted by Google

necessarily draw to it the attention of the whole judiciary, bar, and the people; and the newspapers, too, will discuss it, and it is either to become a precedent for the State to act upon or something to shun. It is then your high duty that this question should be decided correctly, but it is quite immaterial, in view of its magnitude, which way it is to be decided so far as this respondent is concerned. It will be but a little while before the court, counsel, and accused shall have passed away, but the record that will be left here will remain for all time. It will be an interpretation of the Constitution of this State, the first that has ever been attempted by the Senate acting as a Court of Impeachment, and which may become of vast importance. Whatever may be the feelings or prejudices of to-day, they are but transient; their memory can in no way influence the judgment of the future, and it is for the future you are deciding this case. The judgment that you shall render upon this matter is one that is to endure and govern them.

I appeal to the Senate as public men—as enlightened statesmen—to take a broad constitutional view of this question. I submit to the Senate that it is impossible to strike this respondent unless you strike through the Constitution itself. Will you do it?

The Presiding Officer—The question is upon granting the motion offered by the counsel for the respondent. Do the Honorable Managers wish to be heard?

Mr. Manager Cochrane—Mr. President: I have but a very few words to say with regard to this case, in reply to the long argument which has been made, and if the gentleman who is to succeed me will be as brief as I shall be, I hope that we shall close up our side of the argument by the time the clock strikes four.

While the gentleman has so copiously quoted from the authorities which he has cited; while he was seeking to entrench himself so strongly on the precedents which he has

Hosted by Google

brought before you from other States, from other courts and countries, I could not but wish, although I could not avail myself of it to argue this case at any great length, that he did not carry out his analogy, and give us notice of this motion, a motion which simply amounts to an answer, and which, if successful, must entirely dispose of this case, and necessitate a judgment of acquittal here,--for that is the only judgment which this Court can render. This would have carried out the understanding which all parties had at the time of the last adjournment of this Court. But the gentleman has not seen fit to do it. But our desire at the present time to speed the trial of this case as rapidly as the public interests here involved will permit us to do, compels us at this time to proceed to answering the argument without asking any further preparation than we have been able to make while the argument itself was proceeding. But, near the close of the argument, a single word escaped from the gentleman which let a little light in upon my mind. He referred to the trial of Warren Hastings, and he threatened that this trial should be as long as that,—or that it might be as long.

Mr. Shipman—I did not intend to say that it should be as long.

Mr. Manager Cochrane—I will take it back. You said it might be as long. I understood you that it was likely to be of very great length. I say that reference let in a little light upon my mind in reference to this case, and that was, that we were brought here, perhaps, to listen to long arguments. We shall probably have occasion to make some ourselves. While the trial of Warren Hastings lasted eight years and failed finally because it lasted eight years, if this trial can be procrastinated eight months it will fail for the want of a respondent. That may be the course which is to be pursued here; for if the respondent is out of office we have got nothing further to do with him.

Hosted by Google

The counsel here has invented a most beautiful syllogism and he has labored at it with great effort. And what is it? It is one that is worthy of Aristotle or any other master of logic.

He says here that the Constitution gives to the House of Representatives the whole power of impeachment. Who denies it? We admit it. He says here that the Managers are not the House of Representatives. Now we are too modest to claim that. We never did claim it; I, for one, have never thought of claiming it, and I presume my co-Managers do not claim it. But what is the conclusion? He says, then, that, therefore, the Managers cannot impeach Charles A. Edmonds, Commissioner of this Land Office. Is there any doubt of it, if his premises are correct,—and we do not deny them, not one particle. But there is, Mr. President, a fatal error in that. His entire argument has been upon one basis, and that is that the articles of impeachment constituted the impeachment itself. And, for the purpose of substantiating this, he has cited us to magazines, and cyclopedias, and dictionaries, and to the lowest expressions found in the various law books, and still maintains himself upon that ground.

Now, our position is that these articles of impeachment are only a part of the machinery for the purpose of trying the party impeached. There is not a single authority which he has referred to, and I challenge him to find a single authority, that declares that an article of impeachment is necessary to an impeachment. He has cited us to the English cases, and every one who has referred to the English cases knows what principles have there been fully carried out, and that the practice there has been accurately defined. Let me read one reference to an English case here. We take the ground, Mr. President, that articles of impeachment are not a necessity at all, although they are a common form, and in fact with the exception of this case, which is perhaps the only case where articles of impeachment have not been exhibited. But, as I

Hosted by Google

have said, the practice of England has been definite with regard to this, and as he (Mr. Shipman) has said that we should go there to find what an impeachment means and how it is carried out, I will read from Hallam's Constitutional History of England, Vol. I, 488:

"The revival of this ancient mode of proceeding in the case of Mompesson, though a remarkable event in our constitutional annals, does not appear to have been noticed as an anomaly."

And I call the attention of the Senate to this remark:

"That it does not appear to have been noticed as an anomaly."

"It was not indeed conducted according to all the forms of an impeachment. The Commons, requesting a conference with the other house, informed them generally of that person's offense but did not exhibit any distinct articles at their bar. The Lords took up themselves the inquiry; and having become satisfied of his guilt, sent a message to the Commons that they were ready to pronounce sentence."

That is all there is of it in the English courts, and even in England it did not attract any attention. Can there be any doubt in the view of English laws, in the view of English publications, in the view of English writers in general, that articles of impeachment are not a necessary part of the machinery? They are only a convenience, a part of the machinery for the purpose of trying an impeachment; they are only an incidental in it; and upon them do not depend the vitality or the essence of the impeachment itself. We assert then, and we assert without fear of successful contradiction in this case, that they are not necessary at all; that there is no more necessity of them than there is that the House of Commons, or in this country, as has generally been the practice in the United States, that the Lower House should attend as committee of the whole upon the trial itself. That has been the practice, and there is not a single case that I can

Hosted by Google

find, where this custom has not been carried out. And why should it be said that the articles of impeachment are any more a part of the impeachment itself than the attendance upon the House could direct and control its Managers? It is only a method or practice.

It appears that in all these cases these articles of impeachment have been discussed. Why did not the gentleman claim that discussion was necessary upon an impeachment? He did not; he could not successfully. The House might discuss them, or they might not; but invariably, as a matter of fact, they are discussed, and yet it is no part of the impeachment itself. They are generally signed by the Speaker; but is the Speaker's signature of any validity? Is it necessary? I would ask if the articles are not as good without the signature of the Speaker as with it, if the House so direct? There can be no doubt whatever of it. These articles are also generally ratified and approved by the House itself,—by the Lower House, where the articles originate. But how are they to be ratified and approved? Is it necessary that there should be any vote upon it, declaring that they ratify and approve those articles? Is it necessary that they should be brought before them and be amended, other articles substituted, as was substituted in the trial of Johnson? I know of no law that requires this,—none at all. And the only reason why it may be necessary for the House ever to approve of the articles of impeachment is, that having the right to assume their control, and having assumed their control, it is necessary that they should be so authenticated, or authenticated in some similar way, in order that the Senate itself may proceed with the trial. And the only authentication which is a matter of legislative practice, as known in this country, is for a majority vote to declare that such and such things are the will of the House. But if the House choose to declare its will in any other way, is there anything in constitutional law which will forbid them?—I mean in constitutional law in general; not under our Constitution. There is nothing.

Hosted by Google

There is no authority that I know of, that has ever said or even intimated that it is necessary for the House to direct or know of the articles of impeachment. And if it is not necessary for them to direct or know of the articles of impeachment, where is the necessity of the House having anything to do with them whatever? It certainly is not necessary for the House to see that they are punctuated right, in order to bring forth the proper sense of the expressions that are there used. And if it is not necessary that the House should see that they are spelled right in order to gratify a fastidious literary taste, —none of these things are necessary,—then why should the House itself direct or know at all? I know of no reason, and I think no reason can be given.

As I have said, we claim that the impeachment is complete when the Lower House has passed this resolution, or, at least, when it is made known to the Senate.

Now let us look at one or two of these authorities. I shall only refer to them briefly. One or two of these authorities meets the point, if I am right, so far as legislative construction is concerned; and I insist, Mr. President, that legislative construction is far better construction,—it gives a far better definition of what is the proper meaning of the word "impeachment" under the Constitution, and what constitutes its similar and dissimilar parts, than these magazine articles, than the definitions of Webster, than the definitions from any other book that might be found, or, as I have said, the lowest definitions which may be found frequently in law writers.

Let us take the case from Tennessee and see where the impeachment comes in; let us see what the date of the impeachment is, because that is the principal question here involved. On the 11th of February, 1867, the resolution was passed:

"*Resolved*, That Thomas N. Frazier, Judge of the Criminal Court of the county of Davidson, and State of Tennessee, be, and he is hereby impeached of high crimes and misdemeanors in office."

Hosted by Google

Now, when did the impeachment take place in this case? Did it take place some days subsequent, perhaps when they brought up the articles of impeachment, or was not Judge Frazier impeached the moment the resolution was passed? If he was not impeached then, then that language has no meaning whatever. But let us look a little further and see what the articles of impeachment say. I read the heading, and I suppose this is official:

"Articles of Impeachment, exhibited by the House of Representatives of the State of Tennessee, for themselves, and on behalf of all the people of said State, against Thomas N. Frazier, Judge of the Criminal Court of the county of Davidson, in said State of Tennessee, in maintenance of their impeachment heretofore preferred against him."

Can any language be plainer than that? The impeachment was already perfect when they passed the resolution; or, at all events, as I have said, when they informed the Senate that the resolution had been passed and that they would prefer specific articles of impeachment. That is the case in Tennessee.

Let us see if there is anything less, if they have any different rule in New York. I am citing precisely the same cases that have been cited upon the other side:

"*Resolved*, That John C. Mather, Canal Commissioner, in charge of the eastern division of the Erie Canal, be and is hereby impeached, for high crimes and misdemeanors."

Impeached the moment that was passed. Impeached the moment a majority of the House voted for it. There can be no doubt but that this is the legislative construction of the Constitution of the State of New York.

Take the Nebraska case. Look at the heading. I have not the resolution here:

"Articles exhibited by the House of Representatives of the State of Nebraska, in the name of themselves, and all the people of the State of Nebraska, against David Butler, Gov-

Hosted by Google

ernor of the State of Nebraska, in maintenance and support of their impeachment against him, for misdemeanors in office."

What was their impeachment? It was something which had preceded. These articles were brought up in support of the impeachment. They were exhibited to the Senate in support of the impeachment, but constituted no part of the impeachment itself.

There is no necessity of going over all the cases which have been referred to by the learned counsel upon the other side; for I venture to say that he will hardly find one which is not in the same language. The resolution itself shows in each case that the party is impeached by the passage of the resolution, and that is the construction which the respective Legislatures have given to that word.

But we claim here, Mr. Speaker, that the House have passed upon these resolutions. They passed an act which is not an act delegating authority unless we concede the point, which we do not concede, and that is, that the articles of impeachment constitute the impeachment itself.

"When an impeachment is directed, the House of Representatives shall elect from their own body three members, whose duty it shall be to prosecute such impeachment."

Such, says my friend, being coincident with the statute. Then he states that the Legislature got clear beyond the statute.

"And the House of Representatives are hereby authorized to empower the said Managers to prepare and present articles of impeachment in accordance with the resolutions of said House."

Now, if this was a delegation of necessary legislative authority, we should concede the argument, but we do not. It is neither necessary with a judicial function, nor is it necessary with the exercise of the legislative function. It is merely putting into words the charges which have been made by the House. These charges may be more or less specific. The

Hosted by Google

House may delegate powers to any of its committees or to the Managers themselves, to use the language which will be satisfactory to them.

These articles here already have been exhibited to the House, and are presented under this law in accordance with the resolution of the House. There has nothing been shown to the Senate, as yet, nor will the Senate presume that the Managers, in drawing up these articles, have traveled outside of the resolution; and until it is shown, we are precisely within not only the spirit but the letter of that law. We appeared beforehand here and brought these articles before you on behalf of the House, precisely as we state in those articles. We never claimed that they were the articles of the House. They are our own articles, but preferred before you on behalf of the House and in the name of the House, and under the authority which the House of Representatives of the State of Michigan conferred upon us, as we claim, under the strict right, without any infringement whatever of the Constitution, and without any delegation of their constitutional powers.

And, Mr. President, when we come to look at the peculiar Constitution which we have, there is a reason for this construction here,—a peculiar reason for the construction which we have given to the Constitution of this State. I believe that one authority cited by the counsel upon the other side said that in some cases the Senate was prohibited from sitting as a court of impeachment until they adjourned. The only two constitutions in the United States which have that prohibition, is the Constitution of the State of Michigan, and the Constitution, I think, of Pennsylvania,—I may be mistaken with regard to the State—but those are the only two constitutions that exist of that kind or ever have existed in this country. In all of the other States where the articles of impeachment are exhibited, the Legislature is supposed to be in session, and is, in fact, in session. The Legislature may at

Hosted by Google

once proceed with the business. The House then assumes control of the articles; it considers the articles,—considers them, I say, merely as a matter of practice though; for there is nothing in any constitution, there is nothing in any law writer, that says they must consider them. They consider them as a matter of practice, and after they have decided upon them, and agreed to them, they send them to the Senate for trial. But when we come to look at our own Constitution, we shall see that there is a reason for a different rule. Take, Mr. President, the very case which is now before the bar of this house. Here was a petition presented asking the House to impeach Charles A. Edmonds for misdemeanors and high crimes. I do not recollect the language precisely. It was in the closing days of the session, and of a special session, when by the Constitution that Legislature could not outlast twenty days, or, rather, if it did outlast twenty days it would be without pay, which virtually amounts to a provision that they shall not sit after twenty days. As a matter of course, the House would hardly be able to attend to its official business which it must attend to—such as is presented by the Governor—and also to get up the articles of impeachment.

It would follow, then, that unless there is a constitutional provision prohibiting the House from doing this thing, that it was eminently proper for the House to confer upon the Managers, or confer upon such other committee as they may choose, the powers to arrange these articles of impeachment, and to present them to the Senate, the moment of adjournment of the Legislature, for trial before that body.

It has been urged, as an objection against the exercise of this power, that the Managers here have reserved the right to add to these articles. In answer to that argument, I may say that is our business; and when the question arises here, if it shall arise,—and it may, perhaps,—it will be time enough for this Senate to decide whether we have that power under the Constitution, and

Hosted by Google

whether we have that power under the law which was enacted in regard to impeachment; but our claim at the close of those articles is no part of the law, has nothing at all to do with this question. But, says the counsel, what if the Managers should refuse to file articles of impeachment? Well, sir, he has asked the question. I don't know what would happen if they should. But what has that to do with it? What has that to do with the legality of the power or the constitutionality of this law? The Legislature frequently pass laws which are imperfect in themselves, which cannot operate, which cannot be carried out; but that does not invalidate the power upon which they have attempted to act. The counsel says we may refuse to prosecute. True, we may. There is another defect, perhaps, in this law.

These are the principal points to which the gentleman has referred, and they are the only points which I shall discuss in this case; for, as I said at the outset, it seems to me that the entire error of the argument made by the gentleman is, that the articles of impeachment constitute the impeachment itself. Our view of the case has been, from the very outset,—it was at the time these articles were being prepared,—that they did not constitute the impeachment; and while we did not anticipate that this question would be raised, it was a question which has not entirely taken us by surprise, because I presume that my fellow Managers—and, I know, myself—have given some thought to it; and it seems to me, that in examining the authorities, in examining the action of Legislatures, in examing titles with respect to the articles of impeachment which have been brought before you, and many others which have not been brought before you, in examining the resolutions of Legislatures with regard to impeachments, the true theory, and, at all events, the practical definition and construction which was given to the term "impeachment," was, the action of the House itself, where the Legislature had placed it; and that that action was passed entirely to the functions

Hosted by Google

of the Legislature,—the functions of the House,—and, so far as the impeachment was concerned, the necessary functions of the House were closed by the passage of that resolution

Mr. Manager Grosvenor—Mr. President and Senators: In further support of what has been already said upon the law, I shall detain the Senate a few moments in narrating the facts that occurred in the House, to demonstrate that the position taken by my associate is correct,—that the House fully examined and prepared the impeachment. The impeachment is not contained in the resolution solely that he be impeached for corrupt conduct in office, and for crimes aud misdemeanors, but it is embodied in the report of that select committee. It has reference also to the petition presented. The petition, the report of the committee, and the testimony taken by that committee were before the House, and there read carefully and fully; and after that report of the committee was adopted, the resolution was passed and the Senate informed.

Now, from the reading of that report and petition, which the gentleman carefully avoided, the Senate will be informed exactly as to what the House had before them at the time it was acting upon this resolution. If there is anything contained in these articles not warranted by the action of the House, there may be something in the point here taken. If, for instance, we had inserted an article here for murder—charging him with murder—when that subject-matter was not before the House at all and not discussed, not considered, it would be then assuming responsibility which he claims we have assumed in this case. Now, if the Senate will pardon me, I will refresh their memory a little upon that preliminary proceeding in the House, and see whether the House did take action as thoroughly and as fully as they have formerly resolved that these articles be presented and prosecuted.

Now there was presented to the House, on the 22d day of March, a memorial signed by twenty-six respectable citizens of this city, which is as follows. I read from page 99 of the Journal of the Extra Session:

Hosted by Google

"It is susceptible of proof that Chas. A. Edmonds, Commissioner of the State Land Office, has violated act No. 79 of the Session Laws of 1871, which provides that 'the drunkenness of any person holding office under the Constitution or laws of this State, shall be good cause for removal from office, by the authority and in the manner provided by law;'

"*And whereas,* The Constitution makes the Legislature the only body having control of this law as regards a State officer, or who can execute the same when it is in session;

"*And whereas,* We believe that said law was enacted to the end that the people of the State might not be made to endure the disgrace of the continuance in public office of men addicted to the use of intoxicating liquors to excess;

"*And whereas,* The too free use of liquor leads to other debaucheries and excesses in violation of good order, and disreputable to the participant, bringing disgrace upon himself, and thus upon those who have confided the public trust to him, of which debaucheries and excesses it can be proven by undoubted testimony Mr. Edmonds is guilty;

"*And whereas,* Mr. Edmonds has in his employ, as clerks in the State Land office, men who publicly violate the laws of good order and decency, and who use intoxicating liquors to excess;

"*Therefore,* To the end that the law passed in 1871 may not be a dead letter on our statute books, and the people forced to endure the disgrace of having such men in public places where they are compelled to come in contact with them, and be subjected, whenever hate or envy dictate, to the damning words gathered from the haunts of vice and iniquity which such men store up from the debaucheries in which they indulge, and low characters with whom they associate, we ask that the Legislature take proper steps to enter into a full investigation of this subject, and, if the charges of drunkenness or other misdemeanors can be proven against said Charles A. Edmonds, that he be at once removed from the position of Commissioner of the State Land Office; and your petitioners will ever pray."

Hosted by Google

That petition was referred to a select committee, as read by the respondent's counsel. This was on the 22d of March. That committee on the 27th of the same month made a report, and accompanied that report with testimony taken, of nearly two hundred pages of foolscap paper.

Now, we claim on the part of the House of Representatives that these articles of impeachment covered no more ground than the report and the action of the House. It is necessary to read this, because this report is in fact the impeachment, the House having adopted and passed it. I will only read that part of it which refers to the charges:

"While we consider the charge and proofs of drunkenness, disconnected with any other act, as too trivial to call for the candid consideration of your committee; yet, when taken with the facts, as shown in the evidence, that in company with certain of his favorite clerks, he would, in a public manner, engage with them in drinking, carousing, and visiting places of disrepute, to the extent that the attention of the respectable portion of the community was called to him, it seems such an outrage upon the dignity of his official position, as to call for something more than a passing notice. The proof discloses that with some of his clerks, during his official term, he would engage in vile, dissolute, and adulterous conduct, and that in the day-time, and in business hours, and on one occasion, he in company with a confidential clerk, who, too, was a married man, has been known to engage not only in adulterous conduct, but to show such a disregard for some of the common decencies and proprieties of life, as to induce your committee to believe that the proofs would well sustain the charge of not only adultery, but of lascivious behavior.

"While there was no positive proof showing his complicity with the authorship of the scandalous anonymous sheet, called *Every Wednesday Night*, so freely circulated in this House and community, there are sufficient facts and circumstances in proof, and to the knowledge of your committee, to

Hosted by Google

warrant the conclusion that he had knowledge of and was engaged in this disreputable affair, if not the guilty author thereof; and if he be so, he has violated the laws of this State and of the United States, against publishing and circulating obscene, defamatory, and demoralizing matter, and is unworthy the confidence which his official position demands."

Now, so much as I have read refers to the last four articles presented here, and they are only put in form, the substance having been taken from this report. They have put in form a time, and place, and circumstances necessary to direct particular proof to the articles. They are no more, no less, than what is contained in this so far.

"Aside from his moral character, involved in the foregoing, we have investigated the business of his office, and the transactions of himself and clerks therein, as fully and thoroughly as the limited time allotted to your committee would seem to allow; and we find that he, with his clerks, or some of them, particularly with his Deputy, William A. Barnard, and his clerks, Clark, Dunham, Robinson, Knight, Bowen, and Griswold, have from time to time, during his official term, been engaged and interested in private speculations connected with the purchase and sale of lands and 'scrip,' so called, resulting to their pecuniary benefit in large sums of money. To allow those salaried officers to avail themselves of the advantages of the peculiar knowledge incident to their position, to the inconvenience and damage of outside parties, we think is a violation of the spirit and intent of the law in that regard. While these practices are defended by these officials as being justifiable under the law, yet we are of opinion that they should not be allowed; and, as hereinafter delineated, tend to destroy the confidence of the people in regard to the integrity and good faith of the office, tempting these officers to engage in speculations, which, though they may not thereby deplete the public treasury, yet are, in the opinion of your committee, detrimental to the best interests of the people at large, destructive

Hosted by Google

to the valuable rights of the pioneer settlers, and calculated to injure and oppress a large class of our citizens who have the right of protection in this regard.

"We find from the proofs that the Commissioner and his Deputy have from time to time, during his official term, speculated in the purchase and sale of 'scrip' in his office, under the particular management and account of his chief clerk, and in the people's time, to a large amount, realizing therefor a profit to himself and Deputy, since the first of June last, the sum of $8,384.14, as appears by a book kept in the office, being at the rate of about $10,303 per annum.

"It is not strange, with such an example in the responsible head of the department, that those in inferior positions in the office should feel authorized to violate the express letter of the statutes, and engage directly or indirectly in the purchase and sale of State lands in the office, in direct violation of the statute 1861, forbidding any officer or clerk employed in the State Land Office to engage directly or indirectly in the purchase of lands from the State, or to be interested therein.

"Some of these clerks have been in the habit of selling information (as they call it), within their peculiar official knowledge, to outside friends, and in some instances acting as agents for the purchase and sale of such lands for favorite friends, and in other instances used the name of a friend in making purchases which inured to their own benefit, making this a cover to evade the law. Lots have also been marked and held from market for months, for their particular benefit. Several instances of this kind, in proof, and to the knowledge of your committee, have occasioned serious loss and damage to honest settlers, inuring to the benefit and advantage of the land speculators and salaried officers. Your committee do not hesitate to condemn this practice as a violation of the law, and calculated to destroy the confidence of the people in the integrity and good faith of the Land Office."

In view of the wholesome provisions of the Constitution

Hosted by Google

and statute requirements of this State, as to the conduct and character of its officers for protecting and insuring just and equal rights to every citizen; and considering that the Land Department particularly demands the highest order of integrity in its officials, vested as they are with the valuable information of the office; and in consequence of the evidence collected under the power with which your committee has been invested by this House, and which is hereto subjoined, they are of the opinion that Charles A. Edmonds, the responsible head of the Department, has forfeited all right to fill the honorable trust and position of the Commissioner of the State Land Office, and that he should be impeached for corruption in office, and for crimes and misdemeanors against the laws of this State.

"And your committee, in conclusion, unanimously recommend the adoption of the following resolution," which resolution has been read.

Now, the journals will show that that testimony submitted with that report was read with closed doors, in the House, carefully; and, two days thereafter, the very first thing that was done after hearing the testimony, we find that they passed a resolution,—that is, on the 28th,—they adopted the report and the following resolution:

"*Resolved*, That Charles A. Edmonds, Commissioner of the State Land Office, be impeached for corrupt conduct in office, and for crimes and misdemeanors."

And that was submitted to a vote of the House, the yeas and nays called, and passed by a vote of 79 to 5. Now, as my brother Cochrane has said, then and there he was impeached, if ever, in that resolution. By adopting the report of that committee and in passing that resolution, they charged him with all the crimes set forth in that report. They then and there considered the subject-matter of that report in all its details and with the proof before them.

Now, then, what was the next step? Because this departure was inaugurated about that time, not afterwards, as the learned

Hosted by Google

counsel for the respondent says, immediately after the passing of that resolution, this resolution was passed:

"*Resolved,* That ——, ——, and —— be a committee to go to the Senate, and at the bar thereof, in the name of the House of Representatives and of the people of the State of Michigan, impeach Charles A. Edmonds, Commissioner of the State Land Office, for corrupt conduct in office and for crimes and misdemeanors; and acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, through its Managers to be elected, and make good the same, and demand that the Senate take order for the appearance of the said Charles A. Edmonds in due time to answer said impeachment."

The result was taken for corrupt conduct in office; for crimes and misdemeanors. You look at the journals and see what particular crimes and offenses were committed. They are spread out fully upon the record.

Now, the Senate on the same day, as the journals of the Senate will show, gives this record:

"MR. PRESIDENT—In obedience to the order of the House of Representatives, we appear before you, and *in the name of the House of Representatives and of the People of the State of Michigan,* we do impeach Charles A. Edmonds, Commissioner of the State Land Office, for corrupt conduct in office, and for crimes and misdemeanors; and we further inform the Senate, that the House of Representatives will in due time exhibit particular articles of impeachment against him, and will make good the same; and in their name we demand that the Senate take order for the appearance of said Charles A. Edmonds, to answer the same."

Why didn't the gentleman claim that the House of Representatives, in committee of the whole, in pursuance of the precedent in the case of Johnson, should repair to the Senate and be present when that was done? It could not be done through a committee, according to his theory, because that would be delegating the power. The House of Representa-

Hosted by Google

tives must come in a body to the Senate, and then and there make the accusation. Would it have been any stronger? Now, the House was duly informed that that duty had been performed by the committee. The Senate took action at once upon that. I read from the Senate journal, March 29:

"The select committee appointed to consider and report concerning the impeachment of Hon. Charles A. Edmonds, submitted the following resolutions:

"*Whereas,* The House of Representatives, on the 28th day of the present month, by three of its members, Messrs. I. R. Grosvenor, W. H. C. Mitchell, and Aaron Childs, at the bar of the Senate impeached Charles A. Edmonds, Commissioner of the State Land Office, for corrupt conduct in office, and for crimes and misdemeanors, and informed the Senate that the House of Representatives, by their Managers, will in due time exhibit particular articles of impeachment against him, and make good the same, and likewise demanded that the Senate take order for the appearance of the said Charles A. Edmonds to answer to said impeachment;

"*Resolved,* That the Senate will take proper order thereon, and proceed to the trial of such impeachment in the manner provided by law;

"*Resolved,* That the Secretary of the Senate give the House of Representatives due notice of these resolutions;

"And recommend their adoption."

The articles of impeachment had not been prepared, they had not been put in form, embodying the offense of which he had been charged at that time. The work was done at that time, if ever. He was impeached when the Senate took that action and passed that resolution. The Senate had been officially informed and had taken the proper action.

Now, what follows? The House, on being informed, at once appointed Managers and directed them to prepare and present articles of impeachment. Then, the Legislature still in session, with this information before the Senate and before the House, he was impeached, believing that all was done that was neces-

Hosted by Google

sary to be done, except a law to cover the practice in cases of impeachment. Was it competent for that Legislature to pass that law? Does the gentleman suppose that Senators sitting here will declare that law that they passed for this emergency, unconstitutional? They passed the act at once looking to this same state of things. The articles had not been prepared, but the respondent had been impeached at that time as thoroughly as he is at this moment. It was a mere formal matter, to join issue, to prepare the pleading, in such a manner that the proof might be directed in some regular, formal way. Now they passed the act of which section 3 has been read and commented upon. The first clause is the exact copy of the Constitution. And then they empowered further Managers to prepare and present articles of impeachment, in accordance with the resolution of the House.

That points at once to the action of the House for the offenses charged in the impeachment by the House; not for any other. They are simply instruments or agents of the House, to put in form that which the House of Representatives had already declared in substance, by their act.

Now, as my brother Cochrane has said, that was the impeachment. I have read the record here to call to the attention of the Senators, afresh, what was done in the House, to show that it was not simply, as in some of the cases which have been read here, where a member of the House stands up and moves a resolution of impeachment against some person, and no articles proposed; but in this case it was as thoroughly presented to the House as it will be to the Senate, except, perhaps, there was no technical rule as to the admissibility of evidence, as here.

Now the law which he has presented here is the law as referred to in particular books,—they govern particular cases. But the Legislature of Michigan understood all that;—the Senators here understood those authorities about as well as they are understood now. Members of the House were not ignorant of these rules of law.

Hosted by Google

We also found in the Constitution a prohibition against trying or taking any action at all in the case while the Legislature was in session. Then, to meet that emergency, rather than to keep the House in session waiting for those articles to be drawn up, precedents examined, and the forms prepared, they passed this law,—in other words they passed this law to guide that action on this matter. They delegated no power to the Managers whatever.

They could have no power to do anything, except to put in form that which the House had declared in the matter; and have they done anything more? Will the gentleman point to a single article contained in these specific articles that is not covered by that report and the resolution. Certainly it was broad enough,—it was specific enough,—fully as specific in the House with the testimony as it will be here.

Now, we are called upon to say that the rules which we adopted, the rules which the Senate adopted for covering this trial, shall be set aside because the Managers have drawn up these articles of impeachment precisely in accordance with the substance of the impeachment? I think not. In the rules of the impeachment this same proceeding is again referred to:

"I. When the Managers of an impeachment shall be introduced at the bar of the Senate, and shall signify that they are ready to exhibit articles of impeachment against any person, the presiding officer shall direct the Sergeant-at-Arms to make proclamation, who shall, after making proclamation, repeat the following words, viz: 'All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the State of Michigan articles of impeachment against ———,' after which the articles shall be exhibited, and then the presiding officers of the Senate shall inform the Managers that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to them."

Then follows the summons.

The House is adjourned.

Hosted by Google

What power was in the Managers to file a replication or to join issue or to take any action at all, unless it is in that law,—unless all power is delegated to them necessary to perform the duties assigned to them by the House?

But, Mr. President and Senators, I am consuming time without any avail. It seems to me that one object the gentleman has evidently attained, an object that has been evident from the first,—he has attained fame, perhaps, to-day. But it is only for this Senate to say whether you will stand by the rules that you have made in pursuance of the law regulating impeachment. That is the only question. We have made a law. We are not bound by the law of Great Britain, nor by the law of Congress, nor by the law of any other State, except in cases where the Senate has failed to adopt any rule of procedure or the Legislature to pass a law. If there had been no regular law passed and no rules adopted, we might be compelled to go and see what had been done in other similar cases. But the Michigan Legislature has passed a law to guide this matter; it is our rule or it is nothing. We have no right to consult the practice in Parliament, nor in Congress, if that practice is in variance with the law of Michigan.

Now, one authority read by the gentleman from that cyclopedia touched ours rather light, I thought. I will call attention to one paragraph of which I acknowledge to be the rule:

"The proceedings, rules, and practice in cases of impeachment in this country are borrowed from the common law of England—"

Now here comes in the point:

—"excepting so far as they are affected by the Constitution or statutes of the United States, or of the several States."

Well, we grant that that is just the ground that we stand upon. The Legislature has made a rule, and we propose to try this case in accordance with that rule.

The Presiding Officer—Do the counsel for the respondent wish to be heard further upon this motion?

Mr. Shipman—Mr. President, how long will the Senate sit?

Hosted by Google

The Presiding Officer—I suppose until five o'clock. There is no regular hour fixed.

Mr. Shipman—I shall endeavor to close this matter very rapidly.

I think, Mr. President, that I have a right to express some surprise at what I have heard here advanced by the Managers; at least, surprise at the position that has been taken, that articles of impeachment were not necessary. The first Manager bases his whole argument against this motion upon the ground that articles of impeachment are not necessary. What a wonderful delusion the people of the whole world have been laboring under for the last half decade of centuries! In these proceedings, which at first came from Germany, traveled across to England, and there were in vogue for years and centuries, and finally were adopted here, in every case without an exception, there have been articles of impeachment presented, —every one; and all the books that I have read say they are necessary. It stands admitted, as I understand, by the first Manager who addressed the Senate, that if these be necessary, they cannot proceed further with the case, but he does not think them a necessity. He has confounded, probably, another proceeding with an impeachment proceeding. The authority cited—Hallam's Constitutional History of England, p. 487—reads as follows:

"The earliest instance of parliamentary impeachment, or of a solemn accusation of any individual by the Commons at the bar of the Lords, was that of Lord Latimer, in the year 1376. The latest hitherto was that of the Duke of Suffolk, 1449; for a proceeding against the Bishop of London in 1534, which has sometimes been reckoned an instance of parliamentary impeachment, does not by any means support that privilege of the Commons. It has fallen into disuse, partly from the loss of that control which the Commons had obtained under Richard Second and the Lancastrian kings; and partly from the preference the Tudor princes had given to the bills of

Hosted by Google

attainder, or of pains and penalties, when they wished to turn the arms of Parliament against an obnoxious subject. The revival of this ancient mode of proceeding in the case of Mompesson, though a remarkable event in our constitutional annals, does not appear to have been noticed as an anomaly. It was not, indeed, conducted according to all the forms of an impeachment. The Commons, requesting a conference with the other House, informed them generally of that person's offense, but did not exhibit any distinct articles at their bar. The Lords themselves took up the inquiry, and, having become satisfied of his guilt, sent a message to the Commons that they were ready to pronounce sentence. The Speaker, accordingly, attended by all the House, demanded judgment at the bar, when the Lords passed as heavy a sentence as could be awarded for any misdemeanor, to which the King, by a stretch of prerogative which no one was then inclined to call in question, was pleased to add perpetual banishment."

That was not an impeachment in any sense of the word, as the proceeding is known now. It had become confounded by many writers, it is said, with other proceedings which were then had in Parliament. There were various ways of cutting off men's heads in the olden time; sometimes by bills introduced in the Commons, and acted upon by the Commons and by the House of Lords. Upon conviction the party was punished; sometimes he was beheaded; whatever the offense might be, the proper punishment was inflicted.

I call the attention of the Senate to one authority which I have read before, namely, the 6th American Law Register, page 261:

"The proceeding by impeachment being purely judicial, it must be distinguished from bills of attainder and of pains and penalties. These must be regarded as pure legislative acts. The two Houses then enact that a particular person is guilty of a crime. They may sometimes go through certain forms of judicial inquiry, but their decision is a *law*, not a *judgment*.

Hosted by Google

Such bills are in utter violation of the principles of true constitutional government, as they confound legislative with judicial power. An impeachment is decided by the House of Lords alone. Any attempt on the part of the House of Commons to participate in this judicial power has always been highly resented by the House of Lords, and would not now be claimed.

"It is also important to distinguish an impeachment from a trial before the Court of the Lord High Steward."

This proceeding against Mompesson was not an impeachment proper. At best, it is an exceptional case, standing alone, away before, I think, the fifteenth or sixteenth century.

Mr. Manager Cochrane—In 1621.

Mr. Shipman—1621,—as far back as that? And from that day to this exists this unbroken line of precedent; and to-day we are asked to make an innovation upon it. He is a bold man who dares ask it.

It is said by the Managers that they ought to have had notice given of this motion, as the verdict of the Senate may be, or must be, that the respondent is not guilty. I do not so understand it. It cannot have that effect; it has precisely the same effect a like motion would have in the courts. A motion to quash an indictment is not putting a party in peril. A motion quashing an indictment against a criminal leaves him to be tried on a proper day, on a proper information, or on a proper charge. That is precisely the effect in this proceeding. If the Senate have not jurisdiction, it cannot pronounce a judgment. If this tribunal should attempt to pronounce a judgment, I do not hesitate to say that the courts of this State would be bound to interfere and arrest its arm, although the highest tribunal of the State; for there is no tribunal, high or low, that can obtain jurisdiction of a person by violating the organic law of the land. It cannot be done. It is useless to talk about it.

Mr. Manager Cochrane—I wish to ask the gentleman if in

Hosted by Google

this case of Blount, where a plea of this very kind was put in,—that is, a plea against the jurisdiction of the court,—if the court did not there render judgment,—send word to the House of Representatives that they were prepared to render judgment, that the House of Representatives attended upon the Senate, and a judgment was there rendered? What I meant to say was that if any judgment was rendered, why, that is the only judgment. But there must be a judgment.

Mr. Shipman—There was no judgment, if I recollect, rendered in the case of Blount. Was it not disposed of on the plea and no judgment rendered at all, having no jurisdiction of the case?

Mr. Manager Cochrane—They decided that they had no jurisdiction; but rendered judgment.

Mr. Shipman—It could not affect the merits of the case, as the motion is to dismiss for want of jurisdiction. I never heard in any court in the world that such a motion as that or a decision upon it could be used in bar of another trial.

Mr. President, it is a familiar rule in cases of impeachment, that the proceedings in the Senate cannot be used as a bar in any other proceeding in a court. I do not know what they mean by the effect of a decision here. Perhaps they mean that it would preclude the Governor, the executive, from making an examination of this matter. I do not so understand it. They can have a written stipulation from the respondent that it shall have no such effect. It could not have that effect, as we look at it.

I find upon page 316 of Wharton's Criminal Trials, this:

"THURSDAY, January 10.—The court proceeded in the debate on the motion made on the 7th inst., and which had been under consideration every day since; and on the question to agree thereto it was determined in the negative,—yeas, 11; nays, 14.

"FRIDAY, January 11.—On motion, it was determined that

"The court is of opinion that the matter alleged in the plea of the defendant is sufficient in law to show that this court

Hosted by Google

ought not to hold jurisdiction of the said impeachment, and that the said impeachment is dismissed.

"Yeas, 14; nays, 11.

"The yeas and nays on this question were exactly the reverse of what they were on the last. On motion, ordered that the Secretary notify the House of Representatives that the Senate will be ready to receive the Managers of the House of Representatives, and the counsel of the defendant, on Monday next, at twelve o'clock, to render judgment in the impeachment against William Blount.

"MONDAY, January 14.—The Court being present, the parties attending, and silence being proclaimed, judgment was pronounced by the Vice President, as follows:

"Gentlemen Managers of the House of Representatives, and Gentlemen Counsel for William Blount: The Court, after having given the most mature and serious consideration to the question, and to the full and able arguments urged on both sides, has come to the decision which I am about to deliver.

"The Court is of opinion that the matter alleged in the plea of the defendant is sufficient in law to show that this Court ought not to hold jurisdiction of the said impeachment, and that the said impeachment is dismissed. Copies of the judgment were delivered to the Managers and to the counsel for the defendant, respectively.

"After which they withdrew; and, on motion, the Court adjourned without day."

I do not find judgment of not guilty in that case. It would be very remarkable if such a judgment should be entered on a motion of this kind. The respondent does not ask for a judgment of not guilty on this motion. I stated here for him, and I desire to state it again if it is necessary, that he wishes to have an examination of these matters, and that he does not fear it, before any tribunal. My duty as counsel, as I believed, was to raise this question in advance to the Senate, and I

Hosted by Google

believe that the Senate would not have excused me if I had not.

It is said that one object has been to gain time; and that I have gained a day. Mr. President, I trust Senators will take the trouble to look over these books, the amount of labor that I have expended upon them, and say if they believe I have been to all this trouble simply for the purpose of gaining one day. I do not doubt but that I could have come in before this honorable body, and, by stating fairly and honestly that I wished twenty-four hours, have obtained the time. I never doubted it a moment. I presented this motion in good faith; not for the purpose of gaining time for any purpose, but to save time.

I do not wish to frighten the Senate into action by referring to Warren Hastings, or his long trial. I did say that I did not know how long this proceeding would take; I do not know. The Honorable Managers on the other side are much better advised of the length of time it will take than I; but I also said that it would not take as long as the trial of Warren Hastings, probably, which lasted some years.

It is said that I cannot find a single authority that articles of impeachment are necessary. I have found all these authorities. Surely, the gentlemen could not have sat here and not heard them; the Senators could not but have heard them. They all say that articles are necessary, how they are to be drawn, and what they are to specify, how they are to be passed upon, and who are to pass upon them; and the reason of the rule, Mr. President, it seems to me, commends itself at once to this practice.

"They are convenient, but not necessary." I might cite him again to the definition of this term, not as used by loose writers, but by law writers,—not the language of historians that the Manager cites as authority, but of law writers who are in the habit of using just the words they mean and none others.

Here is one of the best standard works—Bouvier's Law Dictionary,—and I will call the gentleman's attention again

Hosted by Google

to it, and call the attention of the Senate to the definition of that word, to see if I am wrong:

"Under the Constitution and laws of the United States, an impeachment may be described to be a written accusation by the House of Representatives of the United States, to the Senate of the United States, against an officer.

"The presentment or written accusation is called articles of impeachment."

That is an impeachment. There is no impeachment but that.

It is stated by the Managers that the resolution, as passed by the House resolving that the respondent be impeached for crimes and misdemeanors and corrupt conduct in office, is an impeachment. I deny it, in the sense in which the word is used in the Constitution. That was merely directing an impeachment.

If the Senators will please to look at the Constitution of this State, they will find the meaning of this language. "The House of Representatives shall have the sole power of impeaching civil officers."

Then it goes on in the same section and says, "that a majority of all the members elected shall be necessary to direct"—that is, order an impeachment. That is what that language means in that resolution. It only directed an mpeachment.

It has been said by one of the Managers, that in the case of Andrew Johnson, when the committee went to the Senate to inform the Senate that the House of Representatives had impeached Andrew Johnson, the whole House went with them, and he asked why don't that practice obtain here? I beg the gentleman's pardon; the House did not go with them, —he is mistaken. I will refer him again to the Globe, page 1402–1421, in which it appears that the committee simply went to the bar of the Senate, and there delivered their message, as instructed by the House, and then came back to the House and made their report. The House did not go to the bar of the Senate.

Hosted by Google

Again, it is said that the practice formerly was for a member to rise in his place in the House, and accuse an officer of an offense, and thereupon action was taken immediately, and a committee was directed to go to the Senate, or the House of Lords, as the case might be, and inform that body of the fact. I must again differ with the learned gentleman: proof was required to substantiate the charge always,—sometimes by affidavits, sometimes by other means; but some proof was necessary, and the later practice has always been to do as was done in this case: appoint a committee to take testimony, and report the testimony to the House. After the report is made the House look over the testimony, and if they think that a resolution of impeachment should be passed directing an impeachment, that is done. That must be passed by the required constitutional majority, but articles of impeachment may be agreed to as any other bill may.

Now in this case, again, looking at the facts, the House committee made a report to the House, and the last Manager upon the floor who addressed the Senate, seemed to admit that if they had put in the Articles any other matters,—any crimes,—outside of the matters that had been before the House, there would be some point in this motion—confessing our position to be correct, because he cannot logically come to that conclusion, unless he travels precisely the same road that we do. In other words, he says the House must pass upon the charges made against the officer. That is all we claim; but these can only be found in the articles.

I call the Senate's attention to this fact: that the committee in the House made their report, but the House did not adopt that report. In that sense they did not find the facts. The committee reported a resolution and recommended its adoption.

"And your committee in conclusion unanimously recommend the adoption of the following resolution:

"*Resolved,* That Charles A. Edmonds, Commissioner of the State Land Office, be impeached for misconduct in office, and for crimes and misdemeanors."

Hosted by Google

The resolution mentions no offenses, nor does it say any were proven; and the House merely passed that resolution upon the preliminary report of the committee,—only that and nothing more. That is all they have done about it.

But the Managers in preparing these articles of impeachment have traveled altogether outside of that report. I would call the attention of the Senate, for instance, to Article VII., as follows:

"That the said Charles A. Edmonds, being a public officer of the State of Michigan, through whose hands public moneys pass, to wit: the Commissioner of the Land Office as aforesaid, has at diverse times during the present term of his said office, and as such officer, received moneys current by the laws of the United States as money, in payment for certain lands belonging to the State of Michigan, and has corruptly, and in violation of the laws of this State, and especially in violation of section two hundred and thirty-four of the Compiled Laws of eighteen hundred and fifty-seven, converted or changed said moneys into swamp land scrip, so-called, retaining said moneys for his own use and benefit, in whole or in part, and entering said lands, in payment for which he had received said moneys, as purchased and paid for by said scrip, and has not deposited or turned over to the proper officer of the State said moneys, so received in purchase of said lands.

"By reason whereof the said Charles A. Edmonds has committed a crime against the laws of this State, and is guilty of misconduct in office."

If the Managers are able to find that offense in their report, they can find what I cannot. I will venture the assertion that neither of the honorable gentlemen who represent this matter upon the other side, nor any members of the House, supposed at that time, or had discovered at that time, that the respondent could be in any way made amenable under that section. It is a matter that has been discovered since.

Hosted by Google

Mr. Manager Grosvenor—Look at Article V. You will find it covered by Article V.

Mr. Shipman—I will look at it. Article V. is:

"That said Charles A. Edmonds, Commissioner of the said State Land Office, from time to time, from the commencement of his official term in January, 1871, to the time of the passage of the resolution of impeachment in this case, to wit: the 28th of March, 1872, unmindful of the high duties of his office, in violation of his official duties, his oath of office, and the laws of this State, did, in his office, and with his Deputy in office, and in his official time, so engage in, and carry on the purchase and sale of swamp land 'scrip' (so called), as to operate in fraud of, and to the damage of the primary school fund, the several counties of this State, and of the Treasury of the State.

"And the said Charles A. Edmonds, Commissioner of the State Land Office, was in this manner then and there guilty of corrupt conduct in office, and did commit a misdemeanor in office."

If that is covered by this Article VII., then I am glad—

Mr. Manager Grosvenor (interrupting)—They both refer to the same thing, only changed,—in a different form.

Mr. Shipman—But the charge is for not paying over to the State Treasurer, or the proper officer entitled to receive them, the identical funds received. In Article VII. it is claimed that he changed the money received at the office into scrip, and entered land with scrip, and did not pay it into the State Treasury.

Mr. Manager Grosvenor (interrupting)—The same thing.

Mr. Shipman—No! Article V., as I read it, Mr. President, includes nothing of the kind. It says that he so operated in the scrip as to damage the primary school fund. The exact method, how, or what the Honorable Managers mean by that, I am not able to determine, except that I learn that it does not purport to specify the offense contained in the seventh article.

Now, this report recommending the adoption of that resolu-

Hosted by Google

tion was laid on the table. Afterwards an impeachment was directed, or ordered, as the word usually means, and, in this connection, Mr. Brockway moved to take from the table the report of the committee recommending, etc. The question being on the adoption of the resolution of the committee, Mr. Grosvenor moved that there be a call of the House; which motion prevailed; and, on a call of the House, this resolution was adopted, and that is all that was done. What crimes,—what misdemeanors,—what offenses were meant, are not specified. I cannot find even, as a matter of fact, that the House have in any way passed upon the acts here charged. There is nothing to show that the House passed upon the offenses for which the Commissioner is now held to answer at the bar of the Senate. They must pass upon them in manner and form as they are embodied in the articles presented here; but they are embodied nowhere else. Will it do to say in a resolution, that a person has committed this or that offense by name, and after that comes before the House and is adopted, that they, therefore, pass upon the crimes or the matters alleged in the articles? Certainly not; and why? Because these may not amount to that offense. The House must pass upon the matters charged in the articles, whatever they amount to. And it seems to me, that if they pass out of this well-beaten track, Senators will require some little authority from the Honorable Managers for such an extraordinary course.

Why, it has been urged that the members could not draw pay save for twenty days, and therefore they could not stay to attend to this impeachment business! A most potent reason why they should not do it! We concede that, but still, if the impeachment of this officer was of much importance,—a great deal of importance,—it seems to me they might stay and prepare their articles of impeachment against him. If it was of enough importance for the State to pay from $250 to $300 a day to try him in the Senate, it clearly was of sufficient importance to have warranted them in remaining a few days without pay; certainly, patriotic gentlemen, where a high

Hosted by Google

officer has been charged with offenses of a grave character, such as corrupt conduct in office, should not allow such a trivial consideration as three dollars a day to weigh at all in the balance of their duty to stay.

I submit, furthermore, Mr. President, that they should have staid, and if they could not, it is no reason why the Constitution should be violated. In other cases where the Legislature have adjourned, the matter has gone over to the next Legislature; and if you will take the trouble to examine Cushing upon that question, you will find that an adjournment of the Legislature does not in any way interfere with the proceedings.

Section 2552 says:

"When an impeachment is once pending in the House of Lords, it is not discontinued by a prorogation, or even by a dissolution of Parliament, but continues from session to session, until the proceedings are terminated. Each succeeding House of Commons may, therefore, take up and proceed with an impeachment which has been commenced or prosecuted by their predecessors. But this is not the case with the preliminary steps in the House of Commons, which precede an impeachment, which, like all other unfinished business, are discontinued by a prorogation or dissolution, and therefore require to be revived in a succeeding session."

It has been said by one of the Managers very frankly that these are not the articles of the House. He says, "They are ours." I thank him for this candid admission; they are not the articles of the House. "The House shall have the sole power of impeaching—accusing." That is precisely what I have complained of—that it is done by the Managers, and not by the House, because the House are the only ones that can accuse. It is the high inquest of the State—the grand jury of the State—who alone can impeach an officer.

Then, in remarking upon the power reserved to file additional articles, he says, "that is our business." I suppose the Manager means that the reason why they reserved that power was to provide for matters that they thought might afterwards arise,

Hosted by Google

but which it was not for me to question. I do not wish to enter into or meddle with the private business of the Managers, and I only cite it for this purpose: to show that the theory was that the Managers claimed the whole power of impeaching and to define the offenses, to prescribe and say what offenses the party should be held to trial upon,—claiming in this the right to present additional articles by amendment,—only that and nothing more.

Mr. Manager Cochrane (interrupting)—Mr. Shipman, the only meaning I had was, that so far as that is concerned,—the closing part of the articles,—that being no part of the impeachment whatever, and a mere formal part, of course we are responsible for that language, and you may strike that out and the articles still remain. That is our language, simply, and whether we put that in or leave it out, makes no difference.

Mr. Shipman—I do not care to differ with the gentleman about a mere matter of form; I only cite it to bring before the Senate their theory of the case. If it were stricken out, I admit, the articles would be just as good as they are now; but I only cited it to show that they claimed this power, and that their theory was wrong; that they had usurped the powers given to to the House; and that it was a usurpation of power on their part.

It is asked again, if counsel for the respondent supposes that the Senate will declare that the law passed by them is unconstitutional. I will answer it as squarely and fairly as it is asked:—I do! They would be unworthy to sit here, if they would hesitate, a moment, to do it.

It is said that the Senators and the members of the House understood these authorities when the bill was before them, as well as now; I am unable to answer as to that; I know not whether it be true or not; but it would be very remarkable if the Senators or the Members of the House have been over the books that I have presented here; yet, it may be true; but I have not looked upon it that way; I had supposed that this

Hosted by Google

bill was the result of hasty legislation in the House; that they were anxious to get away, and the Senate was anxious to get away, and so did not stop to scrutinize it very closely, and had not the time to look up the practice in such cases. I will venture the assertion, at all events, that not one Senator in ten had really given more than a general cursory glance at the practice in such cases. If the Honorable Managers of the House were aware of these books and the authorities and the practice in such cases, how do they expect to answer for the manner in which they have discharged their duty in this matter? The articles should have been presented to the House. I supposed that the Honorable Managers, through inadvertence, or in the haste of legislation, and in the hurry to get home to their families, did not carefully look up the practice, and supposed that this power might be delegated. Inasmuch as the articles were not ready, and it would take some little time to prepare them, they thought it might be delegated to the Managers, and they be empowered to present them to the Senate. I do not suppose that they were so fully aware of the practice in such cases as is claimed. But this is not a question of practice. It is deeper than that.

It has been stated that the article cited from the cyclopedia recognizes the right to change, by the Constitution and statutes of the States, this English practice. Is it true that this is so? I admit that a mere practice may be changed, and that the common-law may be changed; but where a method of trial is incorporated into a Constitution, it becomes a constitutional law, and is beyond and above the reach of all legislative action. Why cannot gentlemen look at this matter in its constitutional light, and see that the power cannot be conferred in any way, shape, nor manner, upon any other body than that in which it is lodged by the Constitution? If so, there is no safety for us, for there is no power that rests firmly in the Constitution; or that cannot be wrested therefrom by the Legislature if they choose to do it.

Hosted by Google

Here is the report of the committee. I shall take it for granted that in that, as in other cases, parties are influenced,—biased somewhat on the side which they represent. They are an *ex parte* committee. The Senate will observe that we were unable to get any proof before them. We could not do so, and yet with their friendliness to that side of the case, and with this *ex parte* testimony, they are to proceed and determine for the House the crimes and offenses for which an officer shall be held to answer at the bar of the Senate. Nothing is left to the judgment of the House. I do not believe such powers can be conferred upon a committee. I do not believe that a committee can any more find articles of impeachment than they can pass a law. I deny it! I deny it not only as counsel in this matter, but as a citizen of the State. I protest against their unlawful assumption of power in this case.

Mr. Manager Grosvenor—One question I wish to answer.

The Presiding Officer—Counsel for the respondent have the right to close. No further discussion will be in order.

Mr. Manager Grosvenor—I would like to answer that one question.

The Presiding Officer—If there be no objection, you may proceed.

Mr. Manager Grosvenor—He asks me where the power for drawing Article VII. is, or where the subject matter is referred to in the report. I answer him, that articles V. and VII. refer to the same matter, only charging it in a little different language. The report says "that he had been guilty of, from time to time during his official term, being engaged or interested in private speculation connected with the purchase and sale of land scrip," etc. The two articles are covered by that general statement. One refers to the particular law violated in one, and the particular law violated in another. You see both are covered.

Mr. Shipman—I would call the attention of the Managers to this seventh article; that is, for not paying it over.

Hosted by Google

Mr. Manager Grosvenor.—Converting the money and issuing the scrip.

The Presiding Officer—The question is upon adopting the motion made by counsel for the respondent.

Mr. Moffatt.—I move that the Senate chamber be cleared for the purpose of deliberation;

Which motion prevailed, and the chamber was cleared.

After deliberating for some time, the doors were again opened, and the Managers on the part of the House and the respondent's counsel entered the chamber and took the seats assigned them.

The Presiding Officer—I would inform the Honorable Managers, and the counsel for the respondent, that the Senate wish further time to consider the motion made by the respondent's counsel, and the further consideration of it is postponed until to-morrow morning at 10 o'clock.

Mr. Wheeler—I move that we now adjourn.

Mr. Grosvenor—Mr. President—

The Presiding Officer—Does the Senator from the Twenty-seventh withdraw his motion to adjourn.

Mr. Wheeler—Certainly.

Mr. Grosvenor—I have been asked by one of the Managers to inquire whether the Managers could be heard further upon the authorities.

The Presiding Officer—It would be subject to the order of the Senate, I suppose, in the morning.

Mr. Sheley—I move we now adjourn until to-morrow morning at nine o'clock.

Mr. Moffatt—I move to amend that by making it ten o'clock.

Mr. Moffatt withdrew his amendment, and the Presiding Officer declared the Senate, sitting as a Court of Impeachment, adjourned until to-morrow morning at nine o'clock.

Hosted by Google

Wednesday, A. M., May 1, 1872.

The Senate was called to order by the President *pro tem.*, at five minutes past nine o'clock.

The Sergeant-at-Arms opened the Court with the usual proclamation.

The Secretary call the roll, and a quorum of the Senate answered to their names.

Mr. Sheley—Mr. President: There are some Senators here who have not been sworn in.

The Presiding Officer—If they will step forward, I will administer to them the oath.

Mr. Stockbridge came forward and took the oath.

Mr. Moffatt—I offer the following resolution:

Ordered, That the Secretary of the Senate be instructed to order printed one thousand copies of the daily journal of the Senate sitting as a Court of Impeachment for the trial of Charles A. Edmonds, and one thousand copies of the Impeachment Proceedings.

Mr. Moffatt—I offer this resolution from the fact that we have not a sufficient number of the proceedings in this impeachment trial. There is a great demand for them. I know, in the district where I live, pretty nearly every man wants a copy of the proceedings. I know there is not enough to supply the demand there, and I have talked with others who are in the same condition as I am myself. We want a larger number of them.

A Senater—Does this mean one thousand additional copies?

Mr. Moffatt—This includes the five hundred already ordered.

The resolution was adopted.

Mr. Ball—Mr. President: I offer the following resolution:

The Secretary read the resolution, as follows:

Resolved, That George F. Hitchcock of Kalamazoo, and Henry F. Walch of Grand Rapids, official stenographers to the Senate sitting as a Court of Impeachment for the trial of Charles A. Edmonds, receive as a full compensation for their

Hosted by Google

services in reporting the trial, making a long-hand transcript of their notes for the printer, and attending to the reading of the proof, the sum of eighty cents per thousand ems for the printed matter, estimated as though set in solid type, contained in the impeachment proceedings; they to furnish all needful assistance either in reporting the case or in employing copyists.

Mr. Ball—Mr. President: This resolution is in almost the same language, with reference to the compensation and duties of the reporters, as that adopted by the Constitutional Convention. It is almost impossible to tell how much reporting will have to be done, or how many reporters or how many long-hand writers will be necessary, in order to keep up with proceedings, and to furnish them for us, and also to furnish the copy and reading the proof. This, according to the resolution, would give them about twenty cents a folio for the whole work, and if we have but little to do, of course it will take less work. If we have more, of course it will take more work. They get pay only for the work done and completely.

Now, last night, I suppose, was not a fair sample of the matter; but there were six of them at work until two or three o'clock. It will take, all the time, something like five or six to keep up. I offer this for the purpose of having the compensation fixed, so that, if they employ men, they may know what they are to receive for the labor.

The resolution was adopted,—yeas 25, nays 0.

The Presiding Officer—When the Senate adjourned last evening, it was for the purpose of taking into consideration the motion made by the counsel for the respondent. What is the pleasure of the Senate?

Mr. Romeyn—Before a motion is made upon that, I give notice that, after this morning's session, I shall ask for the enforcement of standing rule No. 51, of the Senate, which I ask to have read at the Secretary's desk.

The Secretary read the rule, as follows:

"No person shall be admitted within the bar of the Senate

Hosted by Google

unless by invitation of the President or some one of the members; Governor, State officers, and members of the House of Representatives excepted."

Mr. Wheeler—Mr. President, I understood last evening that the Honorable Managers had some further authorities upon the question that was before the court yesterday. If they have, I will be pleased to hear them so far as I am concerned.

The Presiding Officer—No further debate will be in order unless ordered by the Senate.

Mr. Waterbury—I would move that the Senate chamber be cleared for consultation on that question.

Which motion prevailed.

The chamber was cleared at fifteen minutes past nine o'clock, and at twenty minutes past nine the doors were again opened, and the Managers entered again and took their places within the bar.

Mr. Brownell—Mr. President, I would ask to be excused from further attendance upon this court, owing to the fact that I have business on hand that demands my personal attention. I have some two hundred men in my employ now, and I left them entirely without any one to lay out work or to guide them in it, and to make necessary arrangements for carrying it on. I would be very glad if I could remain here. I do not wish to shirk the responsibility of the position at all, or any vote upon it, or would not ask this leave unless it was under the most pressing circumstances. If it was any ordinary business I would not ask it. I trust the Senate will grant it.

The Presiding Officer—Do I understand the Senator to ask for indefinite leave of absence?

Mr. Brownell—Yes, sir.

A Senator—I move it be granted.

Mr. Moffatt—It is very disagreeable to oppose a request of this kind, coming from a Senator on this floor,—it is anything but an agreeable duty,—but I do feel it my duty to protest against leave of absence being granted to any member of this Senate, unless it be for the sickness of himself or family, or

Hosted by Google

death. As far as business is concerned, there is probably not a member of this Senate that can afford to stay here during this impeachment trial; but if we undertake to grant leave of absence to one, on account of business, we should be left here with a very slim Senate. I am sure I should like to be excused. I have business to attend to that is very pressing, and requires my attention there, and it is a great detriment to me to leave, and I presume it is so with every other Senator upon this floor.

Now the proceedings—if Senators understand the matter, and of course they do—require a full Senate. We must stay here if we proceed with this trial. It is imperative. If in the course of this trial it should become necessary, or we should think that a conviction should be necessary in this case, it will take twenty-two votes to do it. Now if we grant a leave of absence, although we may be convinced that this man should be convicted, we have not the votes necessary to do it.

If the testimony is such as to convince the Senate, or the most of them, that the respondent should be convicted of these offenses, the people of this State think he should be convicted, and we have twenty-one votes, what position would we be left in, after a long and tedious trial, and this great expense to the State? Therefore, I shall vote against excusing any man from attendance upon this Senate, as I said, unless it is a matter of sickness of himself or family, or death.

Leave was not granted.

The respondent and his counsel entered the chamber, and took their seats within the bar.

The Presiding Officer—Gentlemen counsel for the respondent, and the Honorable Managers: On the motion made by the counsel for the respondent, the vote stands, yeas, 2; nays, 22. The motion is therefore lost. Are the counsel for the respondent ready to file their answers?

Mr. Shipman—Mr. President: I have the answer of the respondent in this matter ready to file, not in so good a shape as we could wish, but probably sufficient in substance, if not in form. It is the original draft. I have not had time to copy

Hosted by Google

it, or to accommodate the Managers on the other side with a copy of it. If it be sufficient, we will file it in the shape that it now is.

The Presiding Officer—I would suggest to counsel that the answer should be read, that the Senate may know what it is. Do you wish the Secretary to read it?

Mr. Shipman—The formal filing was all; I will read it.

Mr. Shipman commenced the reading of the answer at half-past nine o'clock, and the reading was concluded at ten minutes past ten.

The answer is as follows:

In the Senate of the State of Michigan, sitting as a Court of Impeachment.

The answer of Charles A. Edmonds, Commissioner of the State Land Office, to the articles of impeachment exhibited against him by the Managers, in behalf of the House of Representatives:

This respondent, saving and reserving to himself all benefit of exception to the many errors and imperfections in the several articles and specifications in said articles contained, and not confessing any or either of them to be true, or admitting the authority of the Managers to exhibit the same on behalf of the House, but denying their right and protesting against their assumption of power in that behalf, and insisting that he is under no obligation to answer articles of impeachment which have never been adopted by the House of Representatives and which are not exhibited by them, or to submit to a trial thereon, and in no way waiving this objection, but reserving the right to urge the same at any and all times:

For answer to Article I., he says that he is not guilty of the offense therein charged against him, and he denies each and every allegation therein contained, and alleges the same, in the manner and form therein charged, to be wholly false and untrue.

And further answering thereto, he says that his term of

Hosted by Google

office commenced January 1st, 1871. That before that time, divers tracts of land both great and small had been marked upon the books of the office as reserved to various individuals, and that these reserves so appeared upon the books when he took possession of the office. That he does not know whether such lands were reserved for the "particular benefit and advantage of certain land dealers" or not, as he was in no way a party thereto or connected therewith, and knows not how, or why, or when they were reserved, except that it was done before he came into the office; but he denies, and stamps as wholly false and untrue, the charge in said article, that such or any lands were withheld "for a private pecuniary consideration" to this respondent, and states that he had no interest in them, or in their proceeds, or any expectation of being benefited pecuniarily or otherwise thereby. That he is unable to state whether his then Deputy had any interest in such reserves or not, but if he had, that in obtaining the same, he took advantage of his position, and the confidence in him reposed by this respondent, to practice secretly and without the respondent's knowledge, that which he knew this respondent would not have permitted him to do if it came to his knowledge; but if he in fact did have, this respondent submits that he cannot be made to answer therefor. He further says, that some time after that, as he became better informed of matters in the office and his duties pertaining thereto, he was convinced that some of these reserves ought to be removed from the books and the practice changed, and he accordingly commenced the work of removing them therefrom, and has since then been laboring to the best of his ability to correct the books and the practice itself which seemed to have existed under former administrations, and to have been entailed upon the office, as well as to prevent the recurrence thereof. That at no time since he has been Commissioner, has he received any pecuniary or other benefit whatever for or on account of withholding lands from sale, directly or indirectly, nor does he expect to receive any,

Hosted by Google

nor does he know that his present Deputy or any of his clerks have withheld lands from market for their own or others' benefit; and if they have (which he does not admit, but denies), it has been done without this respondent's knowledge or consent and in direct opposition to his instructions.

He further says that most of the reserves mentioned were for State road contractors or upon their orders, and it was a matter of great difficulty to ascertain which of them were good and ought to be withheld from sale and those which ought not to be, and that although the work has been vigorously prosecuted, the books are not yet entirely corrected.

For answer to Article II., he says: That he is not guilty of the offense therein charged. He denies that he has ever, by himself or with his Deputy, or with his clerks, or with either of them, directly or indirectly engaged "in the purchase of lands from the State" which were "for sale in the Land Office of this State, of which he was chief."

And he insists that the allegations and charges in the said article contained, are so vague, indefinite, and uncertain, that he ought not to be called upon to answer the same, and this respondent excepts to the sufficiency of the said article, in this, that it is not alleged or stated therein what acts were done by him, or the time when such alleged purchases were made, or what pieces, or kind, or class of lands were purchased, and in that it does not designate, describe, or define any act whereby this respondent can understand or know what is imputed or charged against him. He denies that he is guilty of corrupt conduct in office, or that he did commit a high misdemeanor in office, as is charged in said article, or that the facts therein stated, in manner and form as the same are therein set forth, do constitute such offense.

For answer to Article III., he says: That, by section one of act No. 229 of the Laws of 1859, the Commissioner of the Land Office was required to issue a certificate of purchase to every settler or occupant of swamp lands belonging to the State, in a subdivision of forty acres, whenever it should be

Hosted by Google

made to appear to him that such settler or occupant had actually resided thereon for five continuous years, and had also drained the same as provided by the act of Congress by which such lands were conveyed to the State.

By section two, before such settler or occupant could acquire the right to occupy or drain such lands, as provided by section one, he was required to file with the Commissioner his application under oath, and obtain from him a license "to enter upon and occupy and drain said lands, for the purpose of obtaining title thereto."

By section three, the applicant was required to make oath that he was not the owner of forty acres of land in any State or Territory of the United States, to entitle him to the benefit of the act.

Section four provided that the license should contain a clause that the settler or occupant should not be authorized to cut any pine or other valuable timber unless to clear the land for cultivation, and then only so much as might be necessary to improve the same, and for a violation of these conditions he should be liable as a trespasser upon State lands.

This act contained no provision authorizing the Commissioner to sell the lands in case the applicant should obtain his license by falsehood, or without intending to reside upon or drain the land, or should not in fact settle upon it; nor did it reach cases where he originally intended to settle upon the land but abandoned the intention afterwards. This omission in the act could only result in many pieces of land being withheld from market under these licenses, which ought to have been subject to sale. To apparently supply this defect in the system, and require more proof on the part of the settler, the act No. 108 of the Laws of 1861 mentioned in said article was passed, section one giving the settler the right to license eighty instead of forty acres, and amending section four of the act of 1859, as follows:

"Sec. 4. And it is further provided, that the license for settlement granted under this act shall contain a clause which

Hosted by Google

shall expressly provide that the settler or occupant shall, within three months after the date of said license, file with the Commissioner of the Land Office, a certificate from the supervisor of the township in which the land is located, together with the affidavit of such settler that he is in the actual possession and occupancy of such land; * * * * and it is further provided that if such settler shall not file his certificate and oath of settlement and occupancy, as above provided, * * * * then his claim shall be deemed as void, and the Commissioner of the State Land Office shall, from and after said time, sell said lands the same as other swamp lands, and this provision shall be inserted in the license for said lands."

In 1865 other safeguards were added by act No. 269, providing that any such licensed land should be subject to sale by the Commissioner after five years from the date of the license upon proof of non-settlement, and after ten years upon proof of abandonment by the licensee.

So that since the respondent has been in office he was required by the laws of 1861 to sell such licensed lands the same as other swamp lands, unless the settler should file the certificate of the supervisor of the township in which the land was located, together with his own affidavit, within three months after the date of his license, showing him to be in the actual possession and occupancy of the land; and by the laws of 1865 such lands were subject to sale notwithstanding the filing of such certificate and affidavit, after five years, upon proof of non-settlement, and after ten years, upon proof of abandonment by the licensee.

And this respondent respectfully submits that if a practice formerly existed in the Land Office to withhold such licensed lands from sale in favor of settlers where no proofs of settlement and occupancy required by the laws of 1861 had been filed, that the Commissioner would commit no offense in obeying the law instead of following a practice which disregarded it.

Hosted by Google

He further submits that the first and third articles are inconsistent and irreconcilable in this: That in the first it is in substance charged as an offense for the Commissioner to withhold from sale land without permission of law, and in the third it is in substance charged as an offense to not withhold from sale land under the same circumstances, and that the Managers "in behalf of the House" ought not to be heard when they allege things contradictory.

And further answering thereto, this respondent denies that he had any knowledge whatever as to whether the settlers referred to were or were not in possession of the lands mentioned in their licenses, or whether they ever had been in possession of such lands under the licenses or otherwise, or whether they had made any improvements on their lands, except as shown by the records of his office, and not in those cases except where his attention was specially called to them; that his home is in the southern part of the State, distant from where this class of lands lie; and he has never had any personal knowledge of land occupied or claimed by a settler, nor information about any such lands except in the ordinary course of business in the office; and that all and each and every statement, allegation, or intimation to the contrary in said article are untrue.

He denies that he has or ever had any interest, directly or indirectly, in such lands, or that he ever made a profit large or small out of them, or for any information furnished about them, or expects to receive any benefit or advantage therefrom. That he has furnished to no one descriptions of licensed land "for the purpose of securing gain" to himself, his Deputy, or clerks, and that all and every charge or intimation that he has done so, in the article mentioned, are false and untrue. That if his Deputy or any of his clerks have furnished any such information for any gain, it was done without his knowledge or consent and against his positive orders.

And touching the practice of withholding licensed land from sale, the respondent says he was not acquainted with the

Hosted by Google

practice of the office under the law of 1861, except as it came to his knowledge upon examination of the records and files of the office, and he then found that the practice in this as well as in other matters had not been uniform, and that he was unable to ascertain any settled rule existing about it. That he then himself examined the law, not unmindful of "the policy of the State to protect the actual settlers," as that policy was indicated by the laws made for his guidance. That the licenses used, and under which the lands were held, contained the clause required by the law of 1861, in regard to filing proof of settlement and occupancy within three months after the date of the license, and this respondent could find no room for the exercise of a discretion on the part of the Commissioner to shield the settler from the consequence of his non-compliance with this law if the land should be applied for by another party; and he therefore did decide that such lands were, in the absence of such proof, subject to sale, not only in October last, but long before that time. That he made such decision in the utmost good faith, and while he did so reluctantly, he had no doubt of its correctness, and that his confidence in the position then taken has been in no degree shaken since. That the only discretion left in the Commissioner, or which the law would allow him to exercise, was to permit the settler to make the proof of possession and occupancy at any time before the land should be actually applied for by other parties, and even this seemed a somewhat forced construction of the act in favor of the settler; but it has always been acted upon as the rule of the office in such cases by this respondent. And he respectfully submits to this Honorable Court that his said decision was and is correct under the law, and that he went so far as the law would permit him to go in favor of the settler.

He denies absolutely that such decision was made corruptly, or for the purpose of gain, or in any way influenced by the hope or expectation of pecuniary gain or other advantage to himself, his Deputy, or any of his clerks, and that all such charges or intimations, whether directly or indirectly made

Hosted by Google

against him in said article, are pure fabrications, and false in every particular.

And in regard to furnishing descriptions of licensed lands "to divers persons on divers days and times since the decision aforesaid," charged in said article, he further says: That by section 1 of act No. 66 of the Laws of 1869, the Commissioner of the State Land Office is "authorized and required, on application of any person, and on payment by such person of the fees allowed by law, to make and deliver to such person a true copy of any field-notes, maps, records, or papers in his office, appertaining to land titles or to the original surveys of any of the lands in this State." Section two of the act fixes the prices or fees to be charged therefor; and section three requires the fees received for such services to be paid into the State Treasury and credited to the general fund.

That in obedience to this law, this respondent has, by his Deputy or clerks, furnished all parties such information in his office appertaining to land titles as they might require, without distinction of persons or discrimination as to the class of lands about which such information was asked. That he did not consider it his duty or right to refuse such information to any one legally applying therefor, or to inquire why or for what purpose such information was required or might be used. That he has never personally attended to this part of the office business, and has no personal knowledge of any particular case, but he knows that such was the general practice of the office, and will continue to be so long as he is Commissioner, unless the law is changed. That he does not doubt that his clerks have furnished "divers persons on divers days and times" descriptions of lands, both licensed and not licensed, as well as other information in his office appertaining to them, and he presumes that some of the persons obtaining the same purchased the lands or part of them, and patents were issued therefor, the fees received for such services being paid into the State Treasury as required by law. But he denies that he corruptly furnished such information or corruptly permitted his clerks to furnish it.

Hosted by Google

He denies that he was interested directly or indirectly in such lands, or in any piece, part, or the smallest fraction of any piece or part of them, or in the information furnished about them. He denies that any improper information was furnished in regard to them, or that his office contains information which is improper, or which all persons have not a right to obtain upon proper application therefor. He denies that he can be held responsible for the use or abuse of information so obtained from the records and papers in his office. And he states that each, and all, and every averment or intimation in said article that he had, directly or indirectly, any interest in such lands, or in the information obtained about them, or that he received or expected to receive any consideration or benefit therefor or therefrom, directly or indirectly, are without any foundation whatever and wholly false.

Wherefore this respondent denies that he was guilty of corrupt conduct in office, or that he was guilty of or did commit a misdemeanor in office, as charged in said article.

For answer to Article IV, he says: That he is not guilty of the offense therein charged.

He denies that he conspired with the said William G. Patrick, or other persons known or unknown, fraudulently to withhold from sale, and mark or cause to be marked as sold, large quantities, or any quantity whatever, of State lands, for the benefit of, or in fraud of, any one, or with the intent to cheat or defraud *bona fide* purchasers, settlers, or others. And he denies each and every allegation in said article. He denies conspiring with any one to withhold land from sale. He denies withholding land from sale; denies marking or causing to be marked as sold on the plat books in his office, for the benefit of himself or any one else, any lands that were not sold; denies receiving by himself, Deputy, or clerks, or from any other source, any money or other thing therefor; denies that his Deputy or clerks, or any or either of them, have received or ever will or can receive any money or other thing of value for or on account of this respondent's withholding

Hosted by Google

land from sale, or for his marking or causing to be marked on the plat books of the office as sold, lands that were not sold, for the benefit of any one. And that said article is false in every particular, and as a whole. That the said Patrick is a stranger to him, and he has no recollection of ever seeing him.

Wherefore he denies that he did on the first day of June, or on any other day or time, commit or was guilty of corrupt conduct in office, as alleged in said article.

For answer to Article V, he says: He admits that from the commencement of his official term in January, 1871, he has, with his Deputy, been engaged in the purchase and sale of swamp land scrip, but not in any way so as to interfere with the due performance of his official duties; that it was the custom and practice of his immediate predecessors, as well as of all former incumbents of the office, to buy and sell such scrip, as this respondent was informed by his Deputy upon assuming charge of the office, and upon whom he then relied for information in matters relating to the customs of the office and its former practices; that he then and still believes such business to be a legal and lawful business for the Commissioner to engage in.

But he denies that he so engaged and carried it on as to operate in fraud, and "to the damage of the primary school fund, the several counties of the State, and of the Treasury of the State;" denies that any and all substantive matter in the said articles contained, in manner and form as the same are therein stated and set forth, do, by law, constitute corrupt conduct in office, or a misdemeanor in office.

Further answering thereto, he says the said article does not name, designate, describe, or define any act done or mode or means used by this respondent whereby he can know or understand what act, or mode, or form of attempt, device, contrivance, or means are imputed to or charged against this respondent in his office of Commissioner of the Land Office, whereby he can more fully or definitely answer the said article

Hosted by Google

than he hereby does; and for the reason aforesaid he excepts to the sufficiency of said article.

Wherefore he denies that he was guilty of corrupt conduct in office, or did commit a misdemeanor in office, as charged in said article.

For answer to Article VI, he says: That when he entered upon the duties of his office, in January, 1871, mindful of the high and responsible position in which he was placed, he sought to employ in his office, as clerks, men worthy of the place, to the end that the business of the office might be properly done, and the interests of the State cared for and protected. That the selection of such men is necessarily a matter of difficulty, the best judges, at times, making mistakes in the character, qualifications, and stability of the men they select. That he retained all the clerks then in the office, on the recommendation of his predecessor. That upon examining the condition of the books and work which ought to be done in the office to get it in the condition it should be, he found additional clerks must be employed. That in the selection of new clerks he endeavored faithfully to select those, and only those, who were honest and capable of performing the required work in the office in a satisfactory manner, and while he may have misjudged the candidates applying, as have other men, in like positions, he protests that he cannot and ought not to be held liable for such mistakes, if any were, in fact, made.

He further says that the clerks whom he supposes the "Managers on behalf of the House" refer to in said article as "certain men of dissolute habits and character," had, previous to their employment in the office, occupied positions of honor and trust in the county where they had for many years resided, sustaining themselves well, and giving general satisfaction. That their character and standing in the community where they had long been known was good, and their social relations and positions of the most unexceptionable kind, and the respondent knew of no reason why they were not in every way "worthy of the high trust and confidence necessarily

Hosted by Google

required of men in their positions." That so far as their duties in the office are concerned, he knows they were capable and efficient, and whatever their private life may have been, he denies that he can be held responsible for it. He denies that he ever appointed or kept in his office as clerk, any one, with good or bad habits, "for the corrupt and unlawful purpose of personal benefit and gain," as charged in said article, or that he ever received or expects to receive, from them or from any one, a "personal benefit or gain," by reason of the employment of any clerk in his office, and that such statement, in the manner and form as charged in said articles, is wholly devoid of truth.

And with reference to allowing his clerks to purchase lands for sale in the Land Office, or to be interested in purchases made in the name of others, and to act as agents for reward for land dealers in entering land, he says that if any of his clerks did purchase such lands, or were interested, directly or indirectly, in purchases made in the name of others, or did act as agents for others, as charged in said article, they did so secretly and clandestinely, without the knowledge or consent of this respondent, and against his orders, and knowing that all such practices were prohibited by him and would not be permitted if they came to his knowledge—and he denies that he can be held responsible for them, or that he thereby committed any offense whatever.

And as to his clerks selling "valuable information contained in such office," he answers that all informatiou contained in the office is public property, and for sale under Act No. 66 of the Laws of 1869, to any person applying and paying the legal fees therefor, but that if they sold the same corruptly and thereby got "unlawful gain," he did not then, and does not now know it, and they did it withont his authority, knowledge, or consent.

And further answering, he says, that after becoming acquainted somewhat with the busiuess of the office, and the temptations thrown in the way of clerks to act as agents for

Hosted by Google

outsiders, besides his verbal orders, he, about the first of July, 1871, caused to be printed rules for the government of the office, of which this is a copy:

RULES AND REGULATIONS OF THE STATE LAND OFFICE—FOR THE INFORMATION OF EMPLOYES ONLY.

Office hours from 8 A. M. to 12 M., and from 1½ P. M. to 5 P. M.

Clerks will be at their posts *promptly*, and devote their time, during office hours, *exclusively to office business.*

Any information sought will be cheerfully given, and all business matters carefully attended to, by the Commissioner or Deputy; but no employe in the office will be allowed to act as agent for other parties, or transact any business in the office, except in the regular discharge of his duties.

Habitual and loud conversation must not be indulged in.

Smoking in the office is prohibited.

Leave of absence, not to exceed four weeks in any one year, will be granted to clerks, at such times as will least interfere with the business of the office.

CHAS. A. EDMONDS,
Commissioner.

A copy of these rules was given to each of the clerks in the office and the same were caused to be posted in the office for the information of all his employes, where they yet remain; and that if such rules, or the verbal instructions mentioned, have been violated by the clerks in his office, this respondent had no knowledge of the fact, and he submits he is not in this proceeding responsible therefor.

And he denies that by reason of any matter in said article contained he was guilty of corrupt conduct in office or did commit a misdemeanor in office. And also denies that any and all matters in the said article contained, in manner and form as the same are therein stated and set forth, do constitute corrupt conduct in office, or a misdemeanor in office, within the true intent and meaning of the Constitution of this State.

And he here excepts to the sufficiency of the allegations contained in said article, and states for ground of exception

Hosted by Google

that it is not stated or alleged therein that this respondent had any knowledge of the alleged corrupt conduct of his clerks.

And for answer to Article VII, this respondent says: That upon taking possession of the office, in January, 1871, he was not well enough imformed of its duties and the manner in which the bustness of the office had been or should be done, to not depend upon others. That he appointed for his Deputy one who had been in the office for many years, and was well recommended for the position by his immediate predecessor, under whom he had served, supposing him to be familiar with its duties and the practice of the former Commissioners, and a person whom he could trust to manage it until he should himself learn its duties; and, for the first few months of his term, he was compelled to and did trust to his Deputy to carry on the office; the orders of the respondent to him being to conduct it as though no change in the chief had been made; this respondent, in the mean time, studying the laws relating to his duties, and gradually familiarizing himself with the work and detail of the office. That he used a compilation of the Land Office laws, prepared by his predecessor, containing, as he understood, all the laws in the State pertaining to that department, but it did not contain this section 234 referred to in said article, and this respondent was not aware of the existence of any such law until since this proceeding was commenced against him. That during these investigations he kept careful watch of his Deputy and of his management, and at different times suggested changes, but he was always met with opposition and the assurance that such had always been the practice of the office. That his Deputy did not tell him, nor did this respondent discover, this practice of retaining money sent for land, and entering the land with swamp-land scrip from actual transactions in the office by his Deputy, but he heard of it outside the office. Upon investigation he ascertained that such had been the practice of the office during all former administrations of it so far back as he could get any information about it; but this respondent did not approve of

Hosted by Google

it, and thereupon ordered it to be discontinued, and all moneys received for such lands to be paid into the State Treasury, and the land entered with cash and not with scrip; and, finally, to insure a change in this as well in other practices which he deemed prejudicial to the public interests, he changed his Deputy, and the practice ceased.

He therefore denies that he has committed a crime against the laws of this State, or is guilty of misconduct in office by reason of any matter or thing in said article contained, and he denies that the matters and things in the said article contained, in manner and form as the same are therein stated and set forth, do constitute a crime under the laws of this State, or misconduct in office within the meaning of the Constitution of this State.

And this respondent maintains and will insist further that said section 234 has no application to the respondent, and never had; and that the law itself has not been in force as a law for over fifteen years.

1. That the section mentioned, found under the general title of "Provisions respecting State indebtedness and State Fund Commissioners," is Sec. 4 of Act 20 of the Laws of 1842, entitled "An act to provide for the withdrawal of Treasury notes, and for other purposes," the first section of which (although not printed in the Compiled Laws) is as much in force as the others, included collectors of moneys for freight or fare on the works of internal improvement of the State, and the commissioners or superintendents who received it, requiring the collector to pay over to them "the identical funds received," and the commissioner or superintendent to pay the same into the State Treasury "in the specific funds received." Certain other officers are mentioned in other parts of the act, but the Commissioner of the Land Office is nowhere named or referred to. The "Fund Commissioners" mentioned in the title were a board created by "An act to establish the State Bank of Michigan," being Act No. 37 of the Laws of 1839, who had the superintendence and

Hosted by Google

arrangement of the sinking fund, the internal improvement Fund, the surplus revenue, the common school and University funds, "and all other funds belonging to this State." Section 234 (section 4 of the act) includes only the classes of officers referred to in the act, whose duty it was by the then existing laws to collect or receive "debts, taxes, or other dues coming to the State." The section is specific in defining and designating them as the "aforesaid collecting and disbursing officers or agents," meaning those before referred to, as well as designating the funds as those "coming to the State" from the sources named. The Commissioner of the Land Office never collected or disbursed such funds, nor did they ever "pass through his hands."

2. The State Land Office was first inaugurated by Act No. 42 of the Laws of 1843, but was only a bureau in the Auditor General's office until January 1, 1844, when the first Commissioner of the State Land Office was created; so that the law of 1842, upon which the article is based, could not have had reference to, or included that officer; besides, the same subject matter is provided for in section 30 of the act creating that officer.

3. The Laws of 1855, Act No. 153, provide:

"Sec. 2. No official bond shall hereafter be required of the Commissioner of the State Land Office, and all moneys heretofore required to be received by him, shall hereafter be received by the State Treasurer (except as herein provided), who shall, in all cases, give receipts for the same, which receipts shall be countersigned by the Auditor General, as in other cases;" and the act nowhere provided for his receiving any funds. Under Act No. 66 of Laws of 1869, he can receive fees for office information, and by the act No. 85 of 1869, the purchasers of the trust fund or swamp lands "shall be permitted to pay" to the Commissioner moneys due from time to time on their certificates, "either for principal, interest, or penalty," on redemption from forfeitures; but he is not, by law, made the receiver of moneys paid on the sale of swamp or other lands; nor is

Hosted by Google

he, in any sense, a collecting or disbursing officer, or "other officer or agent through whose hands (such) public moneys pass" as are referred to in said section 234.

4. The section only included officers handling funds due or to become due the State, from sources then existing, and in the act specified, whereas the State had no swamp land until after the passage of the act of Congress of September 28, 1850, and hence the act of 1842 could not have contemplated or included funds coming from that source. Besides it does not include money to be paid or received on sales of land, but is limited in express terms to the funds "received in the collection of taxes or other public dues, or for freight and charges to passengers on the State railroads."

5. The act of 1842 is not to be found in the Revised Statutes of 1846, but the subjects of embezzling by State officers and of paying over moneys to the person authorized by law to receive the same, are provided for in sections 27 and 28 of chapter 154; and section 1 of chapter 173 of that statute declares that "all acts and parts of acts heretofore passed by the Legislature shall be repealed * * * * * the subjects whereof are revised and re-enacted in these Revised Statutes, or which are repugnant to the provisions therein contained." The subjects of the section upon which the charges in the article is based, having been revised and re-enacted by the Revised Statutes of 1846, the old act was no longer in force.

Wherefore, for the reasons and matters aforesaid, he excepts to the sufficiency of the said article.

And in answer to Article VIII, this respondent denies that he is guilty of a misdemeanor in manner and form as the same is therein charged, and denies that the matters in said article contained, as the same are therein stated, do constitute a misdemeanor within the meaning and intent of the statute of this State.

And he here excepts to the sufficiency of said article, in this, that it does not state that this respondent knew the said printed paper to be of the character or kind therein alleged.

Hosted by Google

And he further says, that neither the said article, nor any allegation therein contained, touch or relate to any official act or doing of this respondent in the office of Commissioner of the State Land Office, or in the discharge of any of his constitutional or legal duties or responsibilities, but said article, and the allegations thereof, relate only to this respondent as a citizen, in his personal capacity; and he denies that by reason of any matter in said article alleged, he, as Commissioner of the State Land Office, has been guilty of a misdemeanor within the intent and meaning of the Constitution of this State.

For answer to Article IX, he denies that he did commit a crime against the laws of the United States in manner and form as the same is therein charged, and denies that the matters in said article contained, as the same are therein stated, do constitute a crime within the meaning of the laws of the United States.

And he further says that neither the said article nor any allegation therein contained, touch or relate to any official act or doing of this respondent in his said office, or to the discharge of any of his official duties or responsibilities, but relate only to him as a citizen in his personal capacity. And he denies that by reason of any matter in the said article alleged, he, as Commissioner of the State Land Office, did commit a crime within the true intent and meaning of the Constitution of this State.

In answer to Article X, he says that he did not commit and is not guilty of any of the matters therein charged, and he denies each and every allegation therein contained, and says that the same are untrue, and he denies that the matters in the said article contained, in manner and form as the same are therein stated and set forth, do constitute good cause for removal from office within the meaning of the Constitution and laws of this State.

And in answer to Article XI, this respondent says: That he did not commit, and is not guilty of any of the offenses or mat-

Hosted by Google

ters therein charged, and says the same are false and untrue. He denies that the matters in the said article contained, in manner and form as the same are therein stated and set forth, do constitute a crime within the meaning of the statute of this State, and he denies that the matters therein alleged and the alleged crime therein charged, can be investigated upon the complaint or presentment of the Managers acting "on behalf of the House."

And further assuming, he says that neither the said article nor any allegation therein contained touch or relate to any official act or doing of this respondent in his said office, or to the discharge of any of his official duties or responsibilities, but relate only to him as a citizen in his personal capacity, and he denies that by reason of any matter in the said article contained he did commit or was guilty of a crime within the meaning or intent of the Constitution of this State.

And this respondent, in submitting to this Honorable Court this his answer to the articles of impeachment exhibited against him, respectfully reserves leave to amend and add to the same from time to time as may become necessary or proper, and when and as such necessity and propriety shall appear.

CHAS. A. EDMONDS.

JNO. B. SHIPMAN,
JONAS H. MCGOWAN,
Of Counsel.

The Presiding Officer—Senators, you have heard the answer submitted by the counsel for the respondent; what is the pleasure of the Senate?

Mr. Romeyn—I move that the answer of the respondent to the articles of impeachment exhibited against him by the House of Representatives be received and filed.

The Presiding Officer—The Secretary will read the motion.

The Secretary read the motion;

Which motion prevailed.

The Presiding Officer—It is so ordered. The answer will be received and filed.

Hosted by Google

Are the Managers ready to proceed?

Mr. Manager Grosvenor—Mr. President, it will be necessary, according to the proceedings in similar cases, to file a replication, and we ask permission to file a replication on behalf of the House of Representatives, as its Managers, and we are not ready at this moment to file that replication. We have listened to the reading of the answer, which is the first intimation in any form that we have had in regard to it; although we have asked several times for the substance of it to be stated orally that we might save the time and be prepared to file a replication, we were unable to get it, notwithstanding the intimation on the part of the respondent's counsel when time was asked here that he would give us the first intimation that he himself had on the subject, so that we might be prepared. I do not know that we can be prepared to file that until the coming in of the court in the afternoon. The answer is quite lengthy, and we are unable to determine here in court what kind of a replication we desire to file,—if the Senate will permit us to file a replication here,—whether it shall be general or specific.

Mr. Shipman—Mr. President: I wish to explain a word. In regard to this answer, I think that the Manager is a little mistaken, or misapprehends perhaps what was said upon the application here for a continuance before. The motion was then for a continuance until the 15th of May, the earliest that we thought we could be ready, and this is the language.

"Still, if we can have a proper time to prepare the answer, and to get ready for trial, we will, as requested, serve a proper number of days in advance upon them, the pleadings, whatever they may be."

At that time we were not well enough advised to know what they would be, and that was spoken with reference to the 15th of May. The time was shortened up, and I have been working day and night, Sundays included, and Sunday night, to get this matter in shape, and get it ready, and it was not ready until late yesterday. I could not, therefore, give them a copy. The Managers have asked me frequently what it would con-

Hosted by Google

tain, and I have, so far as I knew, given them the information. I think I am safe in saying that I have given them information of a great deal of the matters contained in the answers, that is, the general line it would take, as far as I could then determine, and I intended to explain with all courtesy towards the Managers on the other side.

The Presiding Officer—Do the Honorable Managers make a motion for time to prepare a replication?

Mr. Manager Grosvenor—We ask the court to give us until two o'clock this afternoon to file a replication.

The Presiding Officer—Will the Manager reduce his motion to writing and send it to the Secretary?

Mr. Waterbury—If it is in order, I would move that the Senate now take a recess until two o'clock.

The Presiding Officer—A motion to take a recess is in order at any time.

Mr. Sheley—If it is in order, I would, before that motion is put, ask leave of absence, not indefinite, but I am situated somewhat as the Senator that asked leave of absence before. I am engaged in building and it is necessary that I should be there at least, if possible, to get—

The Presiding Officer (interrupting)—Does the Senator from the Twenty-fifth withdraw his motion to adjourn?

Mr. Waterbury—I withdraw it.

Mr. Sheley (continuing)—To get some one to take charge of it. I do not ask indefinite leave of absence, but if I can have a leave of absence for two days, I could get some one that would take my place and the building would go forward. I should like that privilege, if possible. If not, why, of course I shall acquiesce in whatever the Senate deem proper to do. I expected when I left home that I could get leave of absence for an indefinite length of time, but I do not ask that. I ask for leave of absence for two days after to-day.

Mr. Stoddard—I move that leave be granted;

Which motion was lost.

Hosted by Google

Mr. Waterbury—I now renew my motion for a recess;

Which motion prevailed, and the Senate, sitting as a Court of Impeachment, took a recess until two o'clock.

—

Wednesday Afternoon, May 1st.

At two o'clock P. M., the President *pro tem.* called the Senate to order.

The Sergeant-at-Arms made the usual proclamation.

The Secretary called the roll, and a quorum of the Senate answered to their names.

The Presiding Officer—A quorum of the Senate is present. Are the Managers ready to proceed?

Mr. Manager Grosvenor—Mr. President: I wish to make a motion—

Mr. McGowan (interrupting)—Will the counsel allow me one moment? Before the Managers proceed to file their replication, I ask to present and have read and put upon file a protest, which I will submit in writing.

The Presiding Officer—The Secretary will read it.

The Secretary read the protest, as follows:

The Senate of the State of Michigan, sitting as a Court of Impeachment, in the matter of the impeachment of Charles A. Edmonds, Commissioner of the State Land Office:

The respondent hereby respectfully protests, and asks that the Managers on behalf of the House of Representatives be not allowed to file any replication to his answer herein, for the reason that the same has not been adopted or in any way acted upon by the House of Representatives, in whose behalf said Managers assume to act in this matter, and who alone can be heard in reply thereto.

JNO. B. SHIPMAN,
JONAS H. McGOWAN,
Counsel for Respondent.

Hosted by Google

The Presiding Officer—The question is upon receiving the protest and allowing it to be placed upon file and to go upon the record. Do the counsel for the respondent wish to be heard?

Mr. Shipman—Mr. President, I consider that we are overruled upon this question, and do not wish to take up any time upon it; nevertheless I desire to call the attention of the Senate to just one passage from the "Congressional Globe," part 3d, 2d session 40th Congress, in regard to the proceedings to impeach Andrew Johnson, which is as follows:

"Mr. Bingham—I move that the Managers be authorized to file in the Senate to-morrow, through the gentleman from Mass. (Mr. Boutwell,) a general replication to the answer filed to-day by the President of the U. S., to the articles of impeachment exhibited against him by the House.

"Mr. Niblack—I rise to a point of order; my point of order is that the Managers already have full power to do this without further authority from the House.

"The Speaker—The chair overrules the point of order. Heretofore in cases of impeachment the House has always decided upon the replication."

The Presiding Officer—Do the Managers wish to be heard upon the question?

Mr. Manager Grosvenor—One word, Mr. President. It would seem to be perhaps, in that case, fit, that the House of Represntatives should prepare the replication, because there were no officers known to the Constitution of the United States as Managers, and the trial could not proceed in the absence of the House. Congress must be in session. There is an express prohibition in our Constitution, forbidding the trial of the case while the Legislature is in session. The Senators are well aware of it. It is well known also, that these articles could not be filed with the Senate as a Court of Impeachment, until after the adjournment; consequently, unless there is power inherent in the Senate to permit the filing of the replication by the Managers of the House, the case must

Hosted by Google

go to trial without a replication. There was a reason there for the remarks of Vice President Colfax, while in this case, the reason is the other way, from the difference in the Constitution.

Mr. Shipman—I ought not to take up any time, because as I said before, I consider that we are overruled in this matter, and do this to save whatever rights the respondent may have here. Nevertheless, I do not see the reason the same way that the Honorable Manager upon the other side does. The Senate are not to try,—the trial is not to proceed until the Legislature shall have adjourned. The trial is not,—but the formation of the issue is to be made—ought to be made while the House are here, and before there has been any adjournment whatever, even under our Constitution.

The Presiding Officer—The question is upon receiving the protest, and allowing it to go upon the record. Are you ready for the question?

Mr. Wheeler—Mr. President, do I understand that the question will be on allowing it to be received and filed?

The Presiding Officer—Yes sir, and going upon the record.

The motion prevailed.

The Presiding Officer—The protest will be received and go upon the record.

Mr. Manager Grosvenor—Mr. President, the Managers ask for the order of the Senate allowing them to file a replication, to this import: "Ordered, That the House of Representatives, by its Managers, be allowed to file a replication to the answer of Charles A. Edmonds, Commissioner of the Land Office."

The order asked for by the Managers was granted.

Mr. Manager Grosvenor—I will read the replication which the Managers have agreed upon. It is as follows:

Hosted by Google

Replication on behalf of the House of Representatives of the State of Michigan, with the permission of the Senate, to the answer of Charles A. Edmonds, Commissioner of the Land Office of the State of Michigan, to the particular articles of impeachment filed against him in pursuance of its impeachment for corrupt conduct in office, and for crimes and misdemeanors.

The House of Representatives of the State of Michigan, by its Managers, having considered the several answers of Charles A. Edmonds, Commissioner of said Land Office, to the several articles of impeachment exhibited in the name of the House of Representatives and of the people of the State of Michigan, and reserving to said House of Representatives all advantages of exception to the insufficiency of his answers to each and to all of the said several articles so exhibited against him, do deny each and every averment in said answers, or either of them, which denies or traverses the acts, crimes, or misdemeanors charged against him in said articles or either of them, and for replication to said answer, do say that Charles A. Edmonds, Commissioner of said Land Office, is guilty of the corrupt conduct in office and of the crimes and misdemeanors mentioned in said articles, and that the House of Representatives, by its Managers, are ready to prove the same.

I. R. GROSVENOR,
B. W. HUSTON, Jr.
L. COCHRANE,

Managers on the part of the House of Representatives.

The Presiding Officer—The Secretary will receive the replication, and it will be filed. Gentlemen Managers upon the part of the House of Representatives, you will now proceed in support of your articles of impeachment. The Senators will please give their attention.

Mr. Manager Grosvenor—Mr. President, the Managers have agreed to ask the indulgence of the Court to vary one of its standing rules in regard to the opening argument. We ask that two of the Managers may be permitted

Hosted by Google

to open the argument, one stating the propositions of the law, and the other of fact. Mr. Manager Cochrane, it is agreed, shall state the propositions of law, to be followed by Mr. Manager Huston, who is to state the facts. We do this because we think it will save time, as Mr. Huston is more familiar with the facts bearing upon the important articles charged.

The Presiding Officer—Does the Honorable Manager make that as a motion?

Mr. Manager Grosvenor—I make that as a motion.

The Presiding Officer—Reduce it to writing, and send it to the Secretary.

Mr. Manager Grosvenor—Tne motion is that two Managers on the part of the House be permitted to make the opening argument; one stating the propositions of law, and the other of fact, upon which the Managers will rely to make good the articles of impeachment.

The motion was sent to the Secretary's desk.

The Presiding Officer—The question is upon agreeing to the motion made by the Hon. Manager. Are you ready for the question? Those in favor of the motion will say Aye; those opposed, No.

The ayes have it, and the motion is agreed to.

Mr. Shipman—Mr. President: In accordance with the practice in cases of this kind, I desire to submit in advance three questions to be answered by the Senate, stating that the counsel for the respondent do not propose to argue them, but desire to submit them to the Senate without argument:

In the Senate of the State of Michigan, sitting as a Court of Impeachment:

THE STATE OF MICHIGAN,

vs.

CHARLES A. EDMONDS,

Commissioner of the State Land Office:

The respondent respectfully submits to this Honorable Court

Hosted by Google

the following questions, and requests their decision thereon and answer thereto, severally and separately, to wit:

1. Shall any testimony be submitted or given under the article numbered eight, by the Managers?

2. Shall any evidence be given by the Managers under the article numbered nine?

3. Shall any evidence be given by the Managers under the eleventh article?

JNO. B. SHIPMAN,
J. H. McGOWAN,
Counsel for Respondent.

The Presiding Officer—Senators, you have heard the proposition as read to you by the counsel for the respondent. What action do you take in regard to it?

Mr. Wheeler—I move that it be laid on the table.

The motion to lay on the table was lost.

Mr. Romeyn—Mr. President, I move that the Senate retire for the purpose of considering the requests offered by the respondent.

The Presiding Officer—the motion should be to clear the Senate Chamber.

Mr. Romeyn—I will put it in that form.

The Presiding Officer—The Sergeant-at-Arms will see that all persons except members of the Senate and the officers of the Senate retire without the Senate Chamber.

The Senate Chamber was closed at twenty minutes past two o'clock. At twenty-seven minutes before three the doors were again opened, and the Managers and the respondent and his counsel entered and took the positions assigned them.

The Presiding Officer—I am requested to inform the counsel for the respondent that the Senate refuses to answer the questions at present, and would prefer that they should come up in the way of objections to testimony when it is offered.

Mr. Wheeler—I now renew my motion to lay the request on the table;

Which motion prevailed.

Hosted by Google

The Presiding Officer—The Honorable Managers on the part of the House of Representatives will now proceed in support of their articles of impeachment. Senators will please to give their attention.

Mr. Manager Cochrane—Mr. President: In accordance with the practice in courts of law, both upon civil and criminal trials, we now proceed to make a preliminary statement of the case, and in the opening of this case we shall present a few of the principles, not much of the law,—at least not much of the law that we think applicable,—but all on that to come up during the progress of the case, as the various articles are reached, or as they may arise in other ways. To me has been assigned the task of laying before you, Senators, so much; and such parts of the case as I shall submit will call for the application of principles which, if not binding upon you as authority,—and upon this we shall by no means insist, that the precedents or practice of other courts may be here absolutely authority upon you, for that principle of law does not prevail in courts of impeachment,—but which, if not binding upon you as authority, may at least aid you in arriving at your conclusions, and meting out that justice which we, in the name of the people of the State of Michigan, as well as the respondent at the bar, have a right to demand at your hands. But permit me to say in the outset of this case, that the novelty of this court, this—to us—hitherto unknown proceeding, the serious character of the charges made against a high public officer now about to undergo trial,—the new, and perhaps not unimportant page in the judicial history of our State, which we are now about to turn, all tend to fill me with a feeling of hesitation,—with a diffidence in my own power to discharge successfully the duty which I owe to my co-managers, and to accomplish my part of the trust which has been confided to me. I therefore, once for all, beg the indulgence of this Honorable Court, for any shortcomings of which I may be guilty. I ask you to pardon me when I err, and to excuse me when I shall be at fault.

Hosted by Google

More than a third of a century has elapsed, Mr. President, since our State was called into existence, and yet, with a single exception, no State officer has ever before in any way been called upon to answer for official misconduct,—for crimes while holding office. Three constitutions have been framed and two have been adopted in which a power of impeaching civil officers has been expressly granted; and yet, up to the present time, it has remained unused and unneeded. Fourteen years the same power was conferred by statute, and then disappeared from our code of legislative enactments as if it were a piece of machinery whose use would no more be required, or which at least was so improbable that it might well wait the emergency which would require it to be put into active operation.

The impeachment article of our Constitution had at length come to be considered a merely ornamental part of the Constitution, a traditional *in terrorum* clause, there inserted like the rod hung up in some schools, more as a token of responsibility on the part of public officers, than an emblem of the authority of the people.

It is honorable to our State, it is equally honorable to our civil officers, that up to the present time no occasion has been found to invoke the aid of this court of the Constitution, this highest tribunal of the State, to investigate, and if need be to punish, the official misconduct or criminal acts of a public officer.

During eighty years of English history, nearly forty impeachment trials took place, many of them, it must be confessed, of a purely political character, but the great majority of them were for cases of gross misconduct on the part of officers.

Under the Federal Constitution five impeachment trials have taken place. In Massachusetts five impeachments were tried and four convictions had from 1788 to 1821, a period of 33 years. These were all, however, with a single exception, of minor judicial officers. Several other States present a record but little better, and few have escaped without official delin-

Hosted by Google

quents brought to the bar of justice by impeachment, and removed from the position which had been confided to them. For the first time in the history of Michigan, has the Senate of this State been called upon to exercise its constitutional function as a judicial tribunal. Heaven grant that whatever may be the result of this trial which is now before us, no future occasion may arise for the exercise of the power under which you, Senators, are now acting; whether Charles A. Edmonds shall be proven guilty or otherwise of the serious charges which have been brought against him; whether he shall be vindicated and finally go forth from your presence bearing an unsullied character and reputation for official purity,—a name unstained by crime,—or whether, upon the other hand, he leave this Court ruined in character, tarnished in reputation, his name blackened with infamy, as it will richly deserve if we shall sustain the accusation which has been presented to you,—may he be the last, the only officer whose conduct may ever be such as to call into exercise the prerogative which the House of Representatives has here for the first time deemed it its duty to avail itself of,—a prerogative too high to be left to the ordinary prosecuting officer of the State, or of any county, to demand a trial; not before the ordinary courts of law established to regulate the usual private affairs of individuals, but at the bar of the people, and before a court composed of the Senators of the people. And who is he whose conduct has brought this extraordinary tribunal together? A mere citizen, in the private walks of life? No! It is none other than Charles A. Edmonds, Commissioner of the State Land Office, a civil officer, so made by the Constitution; a man nominated to that office by the convention of a great political party; elected in due form of law, and under the law, by a vast majority of our citizens and by virtue of that election, one of the civil officers of the State. He it is, who, if he shall be shown to be guilty, has grossly, willfully, and wantonly violated the confidence which has been reposed in him,—a confidence which has been

Hosted by Google

testified to by his election, It is he who, if we shall maintain our charge, has maliciously broken the laws of the State and of his country and rendered himself liable to their penalties. And of what is the respondent accused? You, Senators, have heard read the articles of impeachment,—you know what they are. Some of those articles charge him distinctly with misconduct in office, some of them charge him as distinctly with crimes and misdemeanors.

You will recollect, Senators, that the first seven articles charge him with this misconduct in office, with misconduct of various kinds, and we shall show to you and insist that the misconduct with which he is here charged is both a violation of certain laws, which will be pointed out to you, and is inconsistent with his duties as a public officer. The four last articles refer more particularly to crimes and misdemeanors. And what are these? The first charge of this kind, contained in the eighth article, is the publication of a certain obscene paper entitled "Every Wednesday Night," containing impure, scandalous, and obscene matter of a description manifestly unbecoming the dignity of his office and a scandal to the community. This we shall insist is a crime against the laws of this State.

But this is not all; we wish to Heaven it were all with which we charge him. The second one charges him with using, knowingly and willfully, the mail of the Uuited States, in violation of the United States law, to distribute this same paper. But that is not all, Mr. President. The third charges him with the violation of a law which was passed during the present session of the Legislature, or while the present Legislature was in session, passed during the last winter; and the other one,—the last one,—charges him with the violation both of the laws of God and of man, and against the laws of decency and society. These are all the charges, and we are glad they are all. It will be our task to furnish whatever evidence we may to substantiate these charges, and it will be yours to decide whether that evidence is sufficient; and if sufficient we shall

Hosted by Google

have no hesitation in asking you to call these crimes which we have called crimes; to call that misconduct which we have called misconduct, and to pronounce the sentence which the Constitution has declared you shall pronounce on such occasions.

Who are the accusers of this Commissioner of the Land Office? Not we, as was attempted to be shown yesterday, in the very able argument which was made by the counsel for the respondent, but the House of Representatives, which has the sole power of bringing an accusation against a civil officer before you.

Representing the people, it has brought this impeachment against the respondent, and he demands his trial upon the accusation.

And what is this High Court of Impeachment? The Senate of the State of Michigan acting by the direction of the Constitution in a judicial capacity. With the impeachment your duties commence, with your decision upon the articles your functions as a court of law will terminate.

Thus the House of Representatives in their charges, thus the party brought before you, thus the charges which we have made, thus you yourselves, all come within the limits of the Constitution.

In stating the real end and purpose of an impeachment I cannot do better than to quote the words of one whose authority will at once be recognized, and the peculiar applicability of whose language cannot fail to attract your attention.

"The purposes of an impeachment," says Curtis in his work on the Constitution of the United States, Vol. 2, p. 260, "lie wholly beyond the penalties of the statute or customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office. Such a cause may be found in the fact that, either in the discharge of his office or aside from its functions, he has violated a law or has committed what is technically denominated a crime. But a cause for removal from office may exist when no offense

Hosted by Google

against positive law has been committed, as where an individual has, from immorality, or imbecility, or mal-administration, become unfit to exercise the office. The rules by which the impeachment is to be tried are therefore placed upon grounds peculiar to themselves, and are not fully embraced by these principles or provisions of law which courts of ordinary jurisdiction are required to administer."

It will be recollected that these words were written long after the mistiness which surrounded and obscured our early cases of impeachment, had been dispelled by an accurate and careful study of the principles which they involved, and of the numerous precedents which had accumulated. True it is that they were written of the Federal Constitution; but it is no less true that they are of general application.

And I may here make the remark that during the early cases of impeachment in this country, both in the cases of State impeachments and of Federal impeachments, questions were continually arising under the peculiar form of our Constitution; and so with the State Constitutions; questions which it was difficult to debate,—questions upon which courts apparently differed. But these have at length been reduced to some system, but which, as I have stated before, may not be binding on you as authority, for each Court of Impeachment seems to act somewhat upon its own rules. These difficulties had arisen from the fact that our impeachment law was taken in some measure from the English impeachment law. It is well known to every reader of history, especially of English history, that under the English impeachment law an impeachment trial was a criminal trial. The charges that were then made in a majority of cases were criminal charges. At all events the punishment which was implicated in all impeachment cases was a criminal punishment; and the instances are numerous—unfortunately too numerous—where the party who had been arraigned, impeached and convicted, went from Westminster Hall to the scaffold. In all of those cases the penalty which was affixed—that is in capital cases like trea-

Hosted by Google

son, murder, and various other cases which were considered capital in England—the penalty which was affixed was death, and the sentence which was pronounced in those cases, to our mind, was most atrocious. Perhaps most of you know, and if you do, it will not perhaps be out of the way to refer to the sentence which was pronounced upon Lord Stamford, upon his conviction. The Lord High Steward called upon him to answer what he had to say why the sentence of the law should not be pronounced against him. He protested against it. That sentence was that he should be taken from the bar of the House of Lords; that three days thereafter he should be hung by the neck until he was dead, but while yet alive he should be cut down, his bowels taken out and thrown into his face, and then he should be quartered and each portion of his body distributed in different parts of the city of London. And this is not all, Mr. President. I have not repeated it all. That sentence was still more atrocious,—too atrocious, to speak of in this audience.

Such was the law of England. But when that law was brought to this country, or, rather, when the law of impeachment was brought to this country, an immediate change took place, perhaps with the exception of a single State.

The constitutions that were adopted here provided for the establishment of criminal courts, and it was thought that these criminal courts were sufficient for the punishment of all ordinary crimes. The consequence was that in all of the States, with one single exception,—with one or two exceptions, perhaps,—the only punishment that could be imposed on a party who was impeached,—and it was limited to civil officers—was removal from office. And it was for this reason that a change had been made of it in this country. It had become purely a civil instead of a criminal proceeding.

In England, on many of these questions, many doubts were raised on the practice; and upon the laws which were to regulate, and the principles which were to regulate, civil impeachment proceedings among us.

Hosted by Google

With regard to impeachments, Dr. Lolme, in his work on the Constitution of England, delivers this eulogy:

"An admirable expedient, which, by removing corrupt ministers, affords an immediate remedy for the evils of the State and works out the bounds within which power ought to be conformed, and which takes away the scandal of guilt and authority combined, and calms the people by a great and high act of justice."

This is precisely what we claim it is here,—what we claim it is doing in this case, if our charges are correct. It takes away the scandal of guilt and authority combined. Well might he laud an expedient, which, by removing a corrupt or wicked officer, at once cuts off the opportunity for evil, and often for grievous criminality, which place, power, and the emoluments of office afford, and purges the State of the "scandal of guilt and authority united."

Well has May, in his work on Parliamentary Practice, p. 642, declared that the power of impeachment is "worthy of a free country." And some other writer has declared that it is absolutely necessary in a free country; for there are instances not only here, but there must be instances in every country, where the position of the officer may be such, when his relations to other officers of the government may be such, that other officers of the government who may perhaps have the power of removing him, will not feel authorized to remove him; perhaps would not be justified in using their own discretion as to this matter; and there is no other way known to us, with the exception of the single State of Oregon, by which an officer can be removed. They bring him into a court of justice in the State of Oregon, and the courts of law there are authorized when an officer is incompetent, when he commits a crime in office, and when for any other reason he shows that he has destroyed that confidence that has been placed in him,—the courts of law there are authorized to try him, and render a judgment of removal.

In the argument to which you listened yesterday, there

Hosted by Google

seemed in some portions of it to be a covert attempt on the part of the learned counsel for the respondent to convey the idea that this was to be a criminal trial. If such were the real intent of these portions of his speach, we must beg leave to differ with him most seriously.

In the trial of Judge Chase, Mr. Campbell, one of the counsel for the respondent, said:

"An impeachment is more in the nature of a civil investigation than of a criminal prosecution."

An examination of the constitutions of the various States of the Union, and of our own, together with the practice in this country, fully shows that in an impeachment trial there is nothing in the nature of a criminal proceeding. No compulsory process is issued for the purpose of bringing the defendant into court. A summons is the only writ that is known in an impeachment court. The trial may proceed in the absence of the defendant, as was done in the case of Judge Humphrey, whose trial took place in 1861, during the early part of the rebellion; he having proved himself a secessionist, and left for portions of the country which were then beyond the reach of the Union troops. In his trial no service was made upon him; no service could in fact be made, although such service was ordered. The trial nevertheless proceeded without question, and the question has never been raised in this country; no doubt has ever been expressed but that it would be allowable.

Jndgment may also be rendered in his absence. In the case of Judge Humphrey, judgment was rendered in his absence.

Removal from office is the extent of the sentence, and is no more a criminal punishment than when such removal takes place by the Governor. There is also a provision in our Constitution, as there is in other constitutions, which shows that an impeachment proceeding is not a criminal trial, and that is a provision that, notwithstanding a trial may take place by impeachment, and notwithstanding a conviction may be had in a court of impeachment, nevertheless, the party may be

Hosted by Google

proceeded against criminally, and conviction had, and punishment inflicted, in a criminal court.

I come now to the question which has been somewhat anticipated by the protest which was presented here by the counsel for the respondent, and which for the present, at all events, this Court has disposed of; but as I have spent some little time in looking up the constitutions,—and I shall only refer to the constitutions of the States,—looking at the various provisions on this point, and arranging them somewhat in order,—I shall beg the indulgence of the Court in referring to them briefly here, because it may save some argument hereafter. At all events it will give to the Court the idea which the Managers have that the language here is to be construed as somewhat different from other constitutions, and virtually different from the construction which is given to it by the counsel for the respondent. If by the fundamental law which has created this Court of Impeachment, its powers are limited to the official misconduct in office on the part of Charles A. Edmonds, or to the adjudication upon crimes and misdemeanors which are connected with or have arisen from the discharge of his duties, possibly Articles VIII, IX, X, and XI must fall to the ground; for the Managers do not claim nor insist, make no pretense, that these articles have no connection whatever with his official conduct. Permit me to remark that we have fully anticipated the issue which was here tendered so far as pertains to these articles. It was precisely in this place that we expected to find the stronghold of the defense so far as these articles were concerned. We expected to find the gallant band here prepared to do and die in defense of this position, if necessary; and we expected to meet this fight in this place, and probably it will be as close a one as the one we have already had. This expectation, however, arose not from any belief in the want of strength of the part that would be attacked nor from any knowledge of the weakness of our case, but simply because an examination of impeachment trials has shown

Hosted by Google

that this defense was invariably raised when there was an opportunity to raise it. There is hardly a case, Mr. President, where there has been an opportunity to put in this defense, that it has not been put in; and there is not a case in the books where this defense has been sustained,—not one. In the very first impeachment trial that took place in this country, Blount's I believe, this very defense was made, and was pressed then with great vigor. Blount was a Senator of the United States at the time of certain acts charged against him. These acts were a conspiracy to get up an expedition against the Spanish Territories, which were then bordering upon the southern limits of the Union, and also creating a disaffection among the Indians for the purpose of furthering this design.

These acts, of course, were not acts connected with his official position; and the defense was there taken and pressed as I have said, strongly and vigorously, by the most eminent counsel which then lived in this country: that they were not acts connected with his official conduct, and therefore were not impeachable. At the time, however, the impeachment articles were presented, Blount, I think, had been expelled. At all events he was not a member of the Senate.

Mr. Manager Huston—He had been expelled.

Mr. Manager Cochrane—I think he had been expelled and was not a member of the Senate. That defense was also made at the time of the exhibition of the articles, that he was not a member of the Senate, and that at all events he was not and had not been, while a member of the Senate, a civil officer.

That case was decided by the Senate, and the Senate, as you were informed yesterday, quashed the proceedings, upon the ground that he was not a civil officer.

Were we disposed to rely on precedent only, we might here content ourselves, and, we believe, with perfect security, with the rulings which have been made in other cases.

I shall now refer the Senate to some constitutions, to show the difference of language which occurs in them, so that they will be able to see the difference in the language used in

Hosted by Google

these constitutions, and the language which is found in our own. In order to arrive at the true construction and meaning of a phrase or expression, it is often convenient, if not absolutely necessary, to compare the phrase of expression in question, with others found elsewhere, similar in character and refering to the same subject matter.

The several States of the Union were all possessed of written constitutions from the time of the Revolution, and the various changes through which their constitutions have passed, in nearly all of which the power of impeachment has been expressly granted, affords no meager fund of explanation by way of comparison. The first constitution to which I will call the attention of the Senate,—and here I will state that I shall simply repeat the language used in these constitutions, giving the date of them without any further remark, and without quoting the entire section—is the Constitution of Pennsylvania of 1776, which provides that officers of the State, whether judicial or executive, shall be liable to impeachment by a General Assembly either when in office, or after resignation or removal for mal-administration. That, of course, Mr. President, applies to official conduct. The Constitution of New York of 1777 also authorizes an impeachment for mal and corrupt conduct in office. In 1821 and in 1846 two other constitutions were adopted. A constitution was adopted in each of those years, to which I shall hereafter refer.

In Massachusetts in 1780 a provision was incorporated for impeachment in cases of misconduct and mal-administration in office.

In Delaware in 1792, it was for any high crime, for treason, bribery, or any crime or misdemeanor in office, precisely the same as the Constitution of the United States. I believe the Constitution of 1831 was in the same language.

Oregon, as I have stated, is the only State which now forbids impeachment, and provides that all cases where impeachment trials take place in other States, and corresponding with these cases when they take place under their Constitution of

Hosted by Google

1845, shall take place in court. In 1845 the provision for impeachment was, in cases of treason, bribery, or other high crimes in office.

The Constitution of Mississippi in 1817 was for any misdemeanor in office. The Constitution of 1832 was in the same language. The Constitution of 1869 is for treason, bribery, or any crime or misdemeanor in office.

The Constitution of Nevada is for any misdemeanor or malfeasance in office.

The Constitution of Missouri of 1865 is for misdemeanor in office. In 1820 the Constitution was in the same words.

In Maine, the Constitution of 1820 provided for impeachment for misdemeanor in office.

In Pennsylvania the Constitution of 1798 provided for impeachment for misdemeanor in office.

In Arkansas the Constitution of 1836 provided for impeachment in cases of any malpractice or misdemeanor in office. The Constitution of 1868 is for treason, bribery, and other crimes and misdemeanors generally, not limiting it to the office, or to conduct in office.

In Illinois, the Constitution of 1818 provided for the impeachment of any civil officer for any misdemeanor in office. The Constitution of 1848 is in the same language. The Constitution submitted in 1862, which was not adopted, was for any misdemeanor in office during the continuance in office. In 1870 the Constitution was in the same words as in 1818 and 1848.

In California the Constitution of 1849 provides for impeachment for any misdemeanor in office.

In Ohio, the Constitution of 1802 provides for impeachment for any misdemeanor in office.

The Constitution of 1865 in Alabama provides for impeachment for any misdemeanor in office; the same language is found in the first Constitution of 1809.

In Iowa the Constitution provides for impeachment for any misdemeanor or malfeasance in office. In 1846 the language was the same.

Hosted by Google

In Kansas the Constitution of 1859 provides for impeachment for malfeasance in office.

In Kentucky the Constitution of 1792 allows it for misdemeanors in office. The Constitution of 1799 was in the same words. The Constitution of 1858 contains the same language.

Nebraska permits an impeachment for any misdemeanor in office.

In Florida the Constitution of 1865 is in the same language; the Constitution of 1838 is in the same words.

The Constitution of 1844 in New Jersey was for misdemeanor in office during the continuance in office, and for two years thereafter.

In New Hampshire the Constitution of 1792, which is the first and last Constitution in that State, provides for impeachment for bribery, corruption, malpractice, or mal-administration in office.

In Virginia the Constitution of 1851 provided for impeachment of the Governor, Lieutenant Governor, Judges, and all others offending against the State by mal-administration, corruption, neglect of duty, or other high crimes or misdemeanors.

In Louisiana the Constitution of 1812 provided for impeachment in cases of misdemeanor in office.

In Tennessee the Constitution of 1834 provided for the impeachment of officers when they commit any crimes in their official capacity, which may require disqualification. The Constitution of 1796 provided for the impeachment of officers for any misdemeanor in office.

In North Carolina the Constitution of 1776 provided for the impeachment of officers offending against the State for violating any part of the Constitution, mal-administration, or corruption.

The Constitution of South Carolina of 1790 provided for the impeachment of officers for misdemeanors in office; the last Constitution, I believe, that that State has had. No, there was a new Constitution in 1865.

There are several States, Mr. President, where there is no

Hosted by Google

limitation made. It is, in those States, left to the power of the Legislature to declare, each Legislature for itself, the causes for which an impeachment will lie. I shall not refer to the constitutions of those States, but simply give the names: Connecticut, Georgia, Rhode Island, Louisiana; and I refer also to the particular constitutions which have existed at various times in those States.

We come now to the constitutions, which are, as we shall insist, of a more general character,—a more general meaning; that is when a provision is adopted in the constitution authorizing impeachments of officers to take place for crimes and misdemeanors out side of their office; and I refer to the Constitution of North Carolina of 1868, which provides that every officer of this State shall be liable to impeachment, first, for corruption or other misconduct in his official capacity; second, habitual drunkenness; third, intoxication when engaged in the duties of his office; fourth, drunkenness in any public place; fifth, mental or physical incompetence to discharge the duties of his office; sixth, any criminal matter, the conviction whereof would tend to bring his office into public contempt.

Precisely what is meant by that last clause, I am not well aware, and think perhaps it would trouble the framers of the constitution themselves to have decided what was intended by that, because I know of no offense, no misdemeanor, no crime, which may be committed by a public officer, that will not bring his office into public contempt.

In the Constitution of Texas in 1845, there seems to have been no limiting provision.

The Constitution of Georgia of 1865, to which I have already referred, provides that the Governor, Lieut. Governor, and several officers shall be liable for impeachment for high crimes and misdemeanors, and for any misdemeanors in office; and I call the attention of the Senate to the language here, because it is definite, and there can be no mistake in regard to it,—"for high crimes or misdemeanors, for any misdemeanor in office,

Hosted by Google

for corruption in procuring office, or for any act which shall degrade their official character."

The Constitution of Indiana, of 1851, provided that impeachments of officers might take place for crime, incapacity, or negligence. The Constitution of 1816, of Indiana, also authorized the impeachment upon conviction of treason, bribery, or other high crimes or misdemeanors. Under that constitution it was of course necessary that there should be a prior conviction before a party could be impeached.

The Constitution of New York in 1821, already referred to provided for impeachment in cases of mal and corrupt conduct in office. So far it was precisely like the prior constitution, and this portion is added: "and for high crimes and misdemeanors."

In Minnesota, the constitutional provision is, in these words: "for corrupt conduct in office, or for high crimes and misdemeanors,"—precisely the same as found in our Constitution.

In Wisconsin, the language is the same as in our Constitution.

In West Virginia, the Constitution of 1861, provided for impeachment for mal-administration, corruption, incompetency, neglect of duty, or any high crimes and misdemeanors.

The Constitution of Michigan, in 1835, contained the same provision, that the present Constitution contains. The Constitution of 1868 also contains the provision in the same words.

The Constitution of Vermont is rather peculiar, and provides that every officer of the State, whether judicial or executive, shall be liable to be impeached by the General Assembly, either when in office or after his resignation or removal for mal-administration. This clause, of course, applies only to officers, but there is another clause in the constitution which provides that any person may be impeached for crime; the language of it is, that the General Assembly shall have power to impeach State criminals, probably referring to high crimes and high misdemeanors.

Hosted by Google

Thus far, Mr. President, I have followed these constitutions, and it will be seen that there is a peculiar variation in the language of them, as they have been read to you; but they may all be divided into three classes:

First. Where impeachments are confined to misconduct and misdemeanors in office;

Second. Where the power of impeachment is granted, but the causes are left to be designated by the Legislature;

Third. Where the misdemeanors and crimes of officers are not limited to those of an official character.

We shall claim that it makes no difference whether the offense committed and charged is an offense connected within the office or not.

It was once said that "all roads lead to Rome." Although it cannot be claimed that these expressions mean one and the same thing still, if the theory is correct, there, is no difference in the constitutions, notwithstanding the peculiar and different expressions used.

I wish to call attention to an extract which I have made, where this very same question was brought up, under the Federal Constitutions. This was also in the Blount case, in which it was argued by Mr. Dallas, who appeared on the part of the respondent, that, in the constitutions of the sixteen States then in existence, sixteen contained provision for the impeachment of crimes in office. The construction that was given to the Federal Constitution must be precisely the same. The fact of the framers of the Constitution coming from States that had these constitutions, explains the peculiar limitation; and it must be fairly supposed that they intended to introduce the same resolution into the Constitution of the United States.

To this, Mr. Harper replied as follows:

"The learned counsel for the defendant have adduced many of the State constitutions to show that the States have, in their own constitutions, restricted the power of impeachment to official persons and official offenses; from whence, according to them, it ought to be inferred that the States, in ratify-

Hosted by Google

ing the Federal Constitution, intended that the power of impeachment which it contains, should be restricted in the same manner. But, Mr. President, I cannot discern how this inference is warranted.

"The very contrary, I should suppose, ought to be inferred. It must be remembered that in the State constitutions the power is expressly limited; and that terms are employed very different from those to be found in the Federal Constitutions.

"This proves that where the States intended to limit the power, as in their own constitutions, they employed express words for that purpose; from whence it may, surely, be inferred that when they took the Federal Constitution without any such express words, they intended to take the power of impeachment along with it without any such limitation. It must also be remarked, that the convention which framed the Federal Constitution was composed of members from each State, who must have understood their own State constitutions, and the limitations on this subject which they contain. Had they intended to limit the power of impeachment in a similar manner, they would no doubt have done it by express words, as in their respective State constitutions."

It may be inferred that when they adopted the Federal Constitution they intended to take the power of impeachment along with it. It may also be remarked that the Senate that passed that, was composed of the best men of our own States, and they must have intended to incorporate into that constitution the same limit by its provisions. It must be admitted that there was great force in the argument of Mr. Harper, and whatever passed into it. The argument is ten times as strong from the fact that when our Constitution was first adopted, it was after a long discussion had arisen in relation to this very power, and we may suppose that when they passed this Constitution they must have used the words they did to avoid the limitation which had produced this discussion in other impeachment trials. It is very certain that they did not fol

Hosted by Google

low the usual rules in regard to impeachments at that time, and I have no doubt as a matter of fact, that it would be natural that while they were framing the Constitution of our State they were studying the constitutions of other States, and they could not have failed to observe that a vast majority of the other States contained this clause. There seems to be a pattern of expression of misdemeanors in office, and we may say that if it had been the intention of our framers to limit it to crimes and misdemeanors, they would have stated so expressly.

I shall argue no further in regard to the powers of this Court, or its jurisdiction in this class of cases. I will simply refer to the case of Andrew Johnson, which has been referred to, and perhaps always will be referred to in this country, as a precedent, from its vast importance and high standing.

Every one that has read the impeachment proceedings knows that the articles contain a clause impeaching him for speeches which he made at St. Louis and Cleveland. Now, whether these were treason, high crimes, or misdemeanors, I do not propose to discuss; but one thing is certain, that these speeches had no connection with his office, acting as President of the United States, which is the same as with Mr. Edmonds as Commissioner. Did he commit this crime any more than Mr. Edmonds committed the offenses charged against him? If such is the fact, the speeches he made there were speeches made in his own private capacity, made just as every one would make such a speech, under such circumstances.

Take the case of Judge Humphrey. It was admitted by one of the Managers upon the impeachment trial that but one single article referred to the official conduct of Judge Humphrey. So that, so far as the authority goes, derived from practice under the Federal Constitution,—and we can see no difference, really, between the Federal Constitution and our own Constitution in this respect,—the practice has been established that a party can be impeached for crimes and misdemeanors outside of his official character.

Hosted by Google

There was another point raised by the counsel for the respondent, in the nature of a demurrer to these articles; and it was, that they were articles so general in their character that they furnished no opportunity for answer to be made to them, and, of course, it will be claimed the articles were not sufficient to authorize evidence to be introduced with respect to them. Now, so far as this point is concerned, the Managers, in advancing these articles, were well aware that this question might arise, which has been raised frequently before. And I will make the same remark to this, that I will make in regard to the crimes being connected with the office: That there is no case that I can find where an article was ruled or decided as insufficient.

When we look at the English cases we find that at that time, and down to the latest,—down, at all events, to the trial of Warren Hastings,—that these trials were mostly of a general character. There are many instances where they were specified, it is true, as in an indictment, but, as I have stated, as a general thing they were not specified, and they were in more general terms than the charges which are charged here.

In the case of Earl Macclesfield there were two sets of articles put in,—one extremely general in their character, and the other as specific as any pleadings of the present day. They covered entirely different grounds. The Earl Macclesfield was tried upon both of them, and although he made objections, little or no attention was paid to it.

In the case of Earl Stamford, precisely the same rule was followed, as far as the generality of the articles were concerned.

In the case of Warren Hastings, the articles themselves filled a volume, the drawing of which articles occupied something like six months; those were specified, but very few cases can be found where they are any more general than are our articles.

When we look upon our own impeachment trials in this country, we find sufficient authority to warrant us in believing

Hosted by Google

that such is the practice in this country, at least to a greater or less extent.

I shall not trouble the Senate by reading extracts from these articles to show their generality, but simply refer to certain cases which have already been referred to, with one or two exceptions, by the counsel for the respondent, in which, if any member of the Senate has the curiosity or desire to examine, will find they are as full as these articles. I refer to the case of Hillyer and Robinson, Articles 2, 4, and 7, and Articles 11, 13, and 22 in the California case; Articles 6, 4, and 5 in the New York case of Dorn, the Canal Commissioner; Article 11 of the case of Madden; Article 10 in the Butler case, and all of the articles in the Blount case, with the exception of the first one. These articles in the Blount case are of considerable length, which arises from the long recitals.

Whether this be the practice or not, I know of no law that requires the articles to be more specific than are here presented. They generally charge, or are supposed to charge, and really do charge facts with which the public suppose him to be acquainted, and there is little or no necessity that he should have the date of the occurrence or the names of the persons pointed out to him, for he can in no way be led astray, and he might as well prepare himself on these general articles as upon specific articles; while, on the other hand, if an officer is incompetent; if he has shown himself incompetent in consequence of his misconduct in office; if he has shown himself as unworthy of this by crimes and misdemeanors, by limiting the charges to the day, time, and place, the Managers would be cut off from getting outside proofs, and from proving any other charge than was exactly recited there, and thereby the people of the State would be injured, because they might not be able to prove a charge laid against a party in Grand Rapids.

In the appendix of the Prescott case, the articles were more general than any articles I have come across. In that case a demurrer was interposed. I think in one of the late cases, one of the counsel for the respondent stated that he never

Hosted by Google

knew of an instance where a demurrer was interposed in an impeachment case, but in that case a demurrer was interposed, on the ground that the articles were too general, and it was expressly overruled.

I have gone nearly over the ground, Mr. President, that I intended to go over. I want simply to make one remark here. I have no doubt but that we shall be pressed here with this proposition: that we are bound by the statutory law, so far as practice is concerned, and by the practice of courts; but all writers lay down, that impeachment trials come under a different law, and the practice which is to govern them is different from that which governs in trials in court.

In many of our works we find such a thing spoken of as a parlimentary law, which is entirely different from the law which governs courts, and as I have already stated, while Parliament and Legislatures are never authorized to set precedents in particular cases, to suit the emergencies of the case, still they are not bound by precedents to any very great extent. The rules of evidence which govern in impeachment trials, I suppose will be admitted on both sides, are substantially the same as in other trials. There is but little difference, it is very true, as will be seen in the examination of the cases, and that the rules are never pressed to the full extent; but it has always been the opinion of courts, that sitting as a Court of Impeachment, substantially the same rules were to be adopted, and were to govern, as in other cases.

There is another point to which I wish to refer, and that is a point raised in the answer to-day, and that is as to the ignorance of the law.

I presume the same rule will prevail here as elsewhere, which is founded on good common sense, and that is this: that ignorance of the law is no excuse for misconduct or malfeasance in office. That is founded on good common sense, and for this reason, that they cannot claim ignorance of the law in every case, when there is no way to determine whether a man is willfully ignorant of the law, or otherwise; therefore,

Hosted by Google

no matter from what source his ignorance arises, they must all come under the same rule. The injury is precisely the same to the State as to individuals, and it makes no difference whether his ignorance arises through inability to understand the law, or whether it arises from willful negligence in posting himself as to his duties, or in any other case,—the result would be precisely the same so far as the State is concerned.

We shall claim in this case that ignorance of the conduct of the clerks is a matter for which this Land Commissioner is responsible. If we shall prove that acts of malfeasance and misconduct have been carried on in that office to a great extent, we shall claim that he is responsible, and that he must answer here, by way of impeachment, and that he may be removed from office; because it is his duty to understand what his clerks are doing there, and to carry on the duties of the office properly.

It is a species of imbecility,—a species of willful negligence, for it can be nothing else, where the misconduct is carried on to any great extent; it is a species of malfeasance. Therefore we shall claim that an officer shall be liable to be impeached by misconduct.

These are all the points I wish to refer to. I will leave the balance to my co-manager who will follow me.

Mr. Manager Huston—Mr. President; I will endeavor to be brief in the facts which are left to me, and I desire to say that I feel incompetent to present the matter as it ought to be presented.

I consider this proceeding one of importance to the State, and to the respondent also, and the only desire I have in this investigation is to investigate the facts, and ascertain whether the charges that are brought against the respondent are true or not. I agree with the respondent, and what has been claimed by his counsel, that this matter should be investigated, and that it is for the interest and the honor of the State that it should be investigated, and that we should come at the truth of this matter.

Hosted by Google

As I understand the law in reference to proceedings of this kind, as has been stated by Mr. Cochrane, it is entirely of a civil nature, and that it is not a criminal proceeding at all, and the modes of procedure in criminal cases do not attach; and that the simple question, as I look upon it, is that this proceeding is a proceeding to determine whether a person holding an office under the Constitution of this State is a person that is for the interest of the State under the circumstances, after he has been charged with crimes, to be permitted to remain in possession of the office; or, in other words, it is simply to determine the question whether it is for the interest of the State that the party should be removed from office or not, as this is the only judgment that can be passed upon him.

While I shall endeavor to be as brief as possible, I shall now take up the different articles of impeachment, and call the attention of the Senate to the facts which we expect to prove, and upon which we shall claim, if we prove them, that the respondent should be removed from the office.

I crave the indulgence of the Senate, because I deem it important that we should understand the facts, and understand the law that governs this officer, that we may come to a just conclusion.

The first article charges "That said Charles A. Edmonds, Commissioner of the Land Office of the State of Michigan, on the fourth day of January, 1871, and on divers other days and times, between that day and the time when said House of Representatives passed the resolution of impeachment against him, to wit: the 28th day of March, 1872, unmindful of the high duties of his office, of his oath of office, and of the requirements of the Constitution and the laws of this State, did corruptly, unlawfully, and in violation of the Constitution and laws of this State, withhold from sale divers large tracts of land, for the particular benefit and advantage of certain land dealers, and for a private pecuniary consideration to himself, his Deputy, and clerks, to the damage and inconvenience of

Hosted by Google

the actual settlers, other dealers, and the people of the State generally; and the said Charles A. Edmonds, Commissioner of the State Land Office, was in this manner then and there guilty of corrupt conduct in office, and did commit a misdemeanor in office."

Now, I suppose it is understood by the gentlemen forming the Court, that there are various kinds of land in this State, denominated University lands, primary school lands, swamp lands, asset lands, internal improvement lands, and Agricultural lands, and that the Commissioner of the Land Office has charge of these lands, and of their sale, and that it is to him that applications are made for the purchase of the many classes of lands that I have enumerated. And we expect to prove, under this article, by various witnesses, that it has been the practice in that office, during the time that the present Commissioner has been in the office, to withhold lands from sale when they ought not to have been withheld, and that it is done in this way: Parties will apply for lands. and they will receive an anawer that the lands are sold. This looking up of lands is necessarily expensive, in consequence of having to send parties into the woods to get the minutes and estimates.

In regard to the value of lands, it has been learned, here at the office, that parties adopt this proceeding, and they consequently take advantage of this information that is so expensive to parties; and they have third parties in whose names the lands are entered; for instance, Mr. A sends his land-hunters into the woods; he goes into the woods, looks up a tract of land, and he applies for the purchase of this land, and he receives information at the Land Office that the lands have been purchased by some other persons.

Now, this purchase by the other party simply amounts to this, as we expect to prove: That they are simply marked in the name of this third party, and withheld from sale until the third party can make a sale to somebody else at an advance price, over and above what the party would have to pay for the same. And that the Commissioner — at least,

Hosted by Google

if we do not show that in this particular instance—that the Commissioner has a share of the profits, and that his Deputy, and that his clerks have shared in the profits that have been derived in this way. Then the party who looks at the lands loses his expenses, and the lands are withheld from the market until they are sold in that way.

We expect to be able to show to you a case just like this, where a gentleman applied for certain school lands last July. He had had the lands inspected, and sent in his application for the lands, and he received a notice that those lands were sold; that afterwards he came to the office, and he found the lands were not patented; that there were simply written upon the description, in pencil, the initials "C. H."

We expect to show that an application was filed on the 6th of July last for the school lands, in which the applicant states that he applied for the purchase of these lands, and that he withheld the issuing of the patent until he ascertains the given name of the party that desires to purchase. He also deposits at the same time his check, drawn upon a bank, in which he was a party, payable to his own order, but the check is not indorsed, and no order appears upon it. The check lies in the office to-day, the lands have not been patented, neither has there been any certificate issued to C. H, Neither has there been anything further done. You are aware that the law provides that the Commissioner, when lands are purchased, shall at once issue his certificate, and the certificate shall provide that if the party does not pay according to the certificate, or does not pay the interest which is due upon the first day of March, or within sixty days after the first day of March, the certificate shall be forfeited. Now, while there has been no certificate issued, there has been no interest, there have been no taxes on the land, there has been no forfeiture sixty days after the first day of March, although there would have been if the Commissioner had done his duty in regard to this mat-

Hosted by Google

ter. And we expect to show, in this very case, that the gentleman who applied for these lands received this notice applied in relation to the same lands. There was two hundred acres of the land, which would be two hundred dollars. That he was informed that since these proceedings have been in progress, in the face and eyes of this proceeding, he has been told that this gentleman, marked C. H., had on deposit there a check for two hundred dollars, and he would allow him to select out of this, the part wanted in payment for his check. Now, we shall claim that if the lands are actually applied for by a *bona fide* purchaser, and the money paid into the State Treasury, that every citizen has a right to purchase these lands, and that there shall be no preferences shown, and that it is a fraud upon the State Treasury to hold these lands in this way. This is one of the cases we expect to show under this same article.

Under the second article we shall claim that if we show what is called for under the first article—

Mr. Shipman—If the gentleman will allow me, I will make this request, that the Manager be as specific as possible, instead of being general, and state, as far as he can, all the facts he complains of, as we are not now advised and wish to get them all.

Mr. Manager Huston—I have only one objection to complying with the request of the gentleman, and that is this: to be specific, and state what we expect to prove by every witness, in every instance, would, I think, take up unnecessary time; and my object in making the statement at all is, to call tho attention of the Senate to the weight of the testimony, and the general tenor of the facts that we expect to prove. I have no objection to being specific so far as can be consistent with the time.

I am satisfied that the Senate is already wearied by the long speeches they have listened to, and are anxious to get at these facts, for this is the main thing to be tried.

Mr. Shipman—I do not ask for details, but so far as the gen-

Hosted by Google

tleman can, to refer to the facts, so that we will know the facts in the same general way.

Mr. Manager Huston—Mr. President, claiming as we do that the Commissioner is the responsible head of this office, and that he is responsible for the acts of his clerks and his Deputy, we shall claim a right, as a matter of course, to introduce proof in regard to the official misconduct of the clerks and the Deputy, as well as that of the Commissioner, and under this second charge we expect to be able to prove that the Deputy Commissioner has been in the constant habit, almost, of dealing in lands; and I wish right here, as I do not desire to take up the time unnecessarily,—I had the different statutes of the State upon a piece of paper to refer to, but I will not read them unless it is called for,—I desire to state what I understand the law to be in regard to the Commissioner of the Land Office and his clerks dealing in lands, either directly or indirectly, that are held by the State for sale.

The Presiding Officer—Is the Honorable Manager speaking of the second article?

Mr. Manager Huston—Of the second article,—and that is, that the statute prohibits the Commissioner or his Deputy from dealing in land while in office, or for three months after the discontinuance of the office.

We expect to show that Mr. Barnard, the Deputy Commissioner, who had been a clerk in this office for five years before he was made Deputy, had been in the habit of violating that provision frequently, and that the Commissioner knew it, and we expect to show that Mr. Barnard has to-day, in his name, in violation of the law,—although not in his own name, over two thousand acres of the lands of this State. That he holds this land in the name of a third party, because he knows he cannot hold them in his own name, which would be in violation of the laws of the State. And that he has had men engaged in looking up lands, which he has withheld from sale since the time the present Commissioner has been in office.

Hosted by Google

We expect to be able to show that other clerks have been engaged in similar transactions under this charge.

Now I will pass to Article III. This third article refers to the law in regard to the selection of homesteads,—homesteads that are licensed to actual settlers. And I desire to read section 3978 of the 1st Vol. Compiled Laws of 1871:

"That the Commissioner of the Land Office is hereby required to issue a certificate of purchase to every settler or occupant of swamp lands belonging to the State, in the proper legal subdivision, for eighty acres of said land, whenever it shall be made to appear to said Commissioner that such settler or occupant has actually resided upon such eighty acres of land for the period of five continuous years, and that he has also drained the same so as to comply with the provisions of the act of Congress, approved September twenty-eight, eighteen hundred and fifty, by which said lands were conveyed to this State."

Now, under that section the Commissioner is authorized to issue a certificate after the party has been in possession of his land for five years. The second section provides that the settler shall file an application and the license shall be issued to him; and section four of the act of 1859, as amended by the act of 1861, provides for the filing of certain proofs within three months of the settlement; and the act of 1865, that I desire to call your attention to, provides:

"That any swamp land licensed under and by virtue of act number two hundred and twenty-nine of the Session Laws of eighteen hundred and fifty-nine, and all acts amendatory thereto, from and after the expiration of five years from the date of the license, may be sold by the Commissioner of the State Land Office the same as other swamp lands are now sold: *Provided*, It shall appear from the affidavit of the supervisor, or two responsible citizens of the township in which such lands are situated, that no settlement has been made by the original licensee, as contemplated in the act licensing the same; that said licensee has no valuable improvements thereon;

Hosted by Google

also, that said licensee cannot claim exemption under the provisions of section eighty-seven of act number sixteen of the Session Laws of eighteen hundred and sixty-two."

Which, I believe, refers to the fact of their being held back by persons in the military services.

"Any person holding a license for the settlement of State swamp lands under and by virtue of act number one hundred and eight of the Session Laws of eighteen hundred and sixty-one, who shall abandon and not reside upon the lands described in his license, for two years, shall forfeit his license; and upon the filing with said Commissioner the affidavit of the supervisor or two responsible citizens of the township in which the said lands are situated, that any licensee has abandoned said land, and has not resided upon the same for two years last past, said Commissioner shall declare said license void, and may sell the said swamp lands the same as other swamp lands are sold: *Provided*, That no such licensee shall be deemed to have abandoned his land by reason of being engaged in the military or naval service of the United States."

So you will see that under that act there are two kinds of proof required before the lands could be sold. One is termed "proof of non-occupation," and the other of abandonment.

Now, we expect to prove under this article that the Commissioner knew this to be the fact; that there were all through our northern counties, wherever there are swamp lands, large parcels of land that were settled by parties, living upon them five years and upwards, who did not file the certificate with the supervisor, and the affidavit that they had entered into possession three months after date of their license; and that was a fact that the Commissioner had full knowledge of. That Mr. Barnard had knowledge of that, and that it was well understood in the office. So that it was understood that throughout the northern counties, if the parties did not file their affidavit within three months of settlement, and the certificate of the supervisor, showing the date of the settlement, and if they did not file

Hosted by Google

these affidavits in the office of the Commissioner, it was understood that land could not be held good. And there these people, understanding the law of 1853, rested in perfect security, for they were on the farms, improving land, and doing everything that could be desired. In defiance of these facts, and in defiance of the law of 1865, the Commissioner, since he has been in office, has not only changed this rule, but decided, in opposition to the law of 1865, that if the affidavit of the supervisor was not filed within three months from the date of the license, or the certificate of the settlement within three months, that he forfeited his claim, and that his lands could be sold the same as any other swamp lands; and the consequence was, that when this ruling was made, that these sharks who are always hovering around ready to take advantage of the poor man, were ready to take them. The first attempt that was made was made by a friend of the Commissioner, living in Coldwater. They attempted to drive these men from their homes. In one case we can show where a party had fifty-five acres and had been upon it over five years, and another case where the party had been on the land over five years, and the patent was issued on the 7th day of October, and the same day the proofs got, showing he had been in possession of the land over five years; that he had built his house upon it; improved it,—in fact, made all the improvement which the law required, and that on the same day a patent was issued to a man by the name of Cornell, of Coldwater.

Such are the facts we expect to prove under this charge, and we claim that if we establish this fact it is sufficient to show that this Commissioner, for the interests of the people of this State, should not hold the office he now holds.

Under Article VI, the nature of this testimony is the same in regard to entering into an arrangement with parties to withhold lands from sale.

Now, gentlemen, I will call your attention to Article V, and I crave the indulgence of the Senate while I attempt to explain what I understand by swamp land scrip. I do not

Hosted by Google

know but every gentleman in this Court understands what is meant by swamp land scrip, but I have found a great many men in the House of Representatives that do not know anything about what it meant, and it will be important that this Court should understand what swamp land scrip is. I have met with gentlemen in this southern part of this State, and some in the northern part of this State, who supposed that swamp land scrip means something that passes from hand to hand, as a bank bill or something like bounty land warrants. It is nothing of that kind; it simply means a credit; and I will illustrate this so, I think, that every gentleman in the Senate, if there be any that do not understand what is meant by this scrip, will understand it. You are aware that we have a law in this State providing for the construction of State swamp land roads all through the northern part of our State. Now, suppose a gentleman takes a contract to make a swamp land road from Lansing to Jackson, forty miles; he is to have a section of land to the mile for constructing that road, which would be forty sections, the distance being forty miles. Now, we have two kinds of scrip. I having been appointed to investigate, I know what some of the witnesses will say. They will call some matured scrip, and some unmatured scrip. The law provides that a party taking a contract to build a road shall give a bond which is to be approved by responsible parties, and when approved, that bond is filed in the proper office, and the contract approved by the proper officer. He has then enough to call for forty sections of land of unmatured scrip. This unmatured scrip means simply this: In order that you may understand it more fully, I will say that when he has taken this contract and it has been approved in the manner I have stated, he has the right to select and have reserved from sale his forty sections of land, and he can withold his forty sections of land from market so it cannot be sold to anybody else by law until the time of the completion of the road. He can have the forty sections withheld. Now, instead of doing that, he can give

Hosted by Google

his order to Mr. A, who can go and select, and have withheld until the two years have elapsed; and he can give an order to Mr. B, who can go and select and give his order on the Commissioner, and of course the patents would not be issued until the contract was completed; and if the contract was not completed they would not be issued. That is what we call unmatured scrip.

Now, suppose he goes on and completes his contract and does not reserve any lands, when his contract is completed and accepted by the proper authorittes he has a credit in the Land Office for forty sections of land, being one section to the mile. That is passed upon the book that they have in the office. It would amount to thirty-two thousand dollars. More strictly speaking, he is entitled to thirty-two thousand dollars against the State, to be paid in swamp land, at ten shillings per acre.

Now, this scrip trade has been a large trade and bankers have entered into it, and it is supposed it accumulates in their offices.

It is done in this way: I go to this gentleman that had this contract, and I want to buy ten thousand dollars of his scrip; he gives me an order on the Commissioner to pay to B. W. Huston ten thousand dollars in swamp land, and charge to my account. It will be charged against this party at ten thousand dollars. I go there with this order; it will be passed to my credit; a book will be opened with me, and I have credit for ten thousand dollars. I might sell to Mr. A or Mr. B this matured scrip; it simply amounts to a credit that the party has upon the books of the Commissioner of the Land Office to be paid in swamp lands, and these bankers buy up these credits, and then it is on the books in the Land Office where these credits are kept with different dealers.

Now if Mr. A. wants to buy one hundred dollars worth of land he draws an order,—he writes to Mr. Preston of Detroit, and he writes to this Commissioner to "pay this man" so many hundred dollars in swamp land, and that is passed to his credit.

Hosted by Google

Thus, what I understand by swamp land scrip is simply a credit, and it is the buying and selling of this credit.

We expect to show by testimony that we do not think will be doubted, that Mr. Edmonds entered into this arrangement when he first took possession of the office, with his Deputy that he had at that time, whenever any money was sent to the Land Office for land,—it being customary for parties wishing to buy lands to send the money directly to the Commissioner, —that he entered into an arrangement with his Deputy, to keep the money, and take the land with scrip. Now, on the face of this, it may not seem to be very bad, or anything wrong about it, but that fact we expect to prove, and I shall call your attention in a moment to wherein I think it is wrong and a violation of the law. Scrip at that time was worth about 60 cents on the dollar. So that if Mr. A sent in a hundred dollars to buy 80 acres of land, and the Commissioner and his Deputy kept the one hundred dollars and paid for the land in scrip, they had made forty dollars by the speculation.

Now that, upon the face of it, might not seem to be very bad,—paying so much of the State indebtedness,—but where the trouble is, and where there is a fraud on the State, where the State has suffered largely, the law provides that the money received should be paid into the Treasury, that is, it provides that fifty per cent of all the money received for swamp land should be paid into the Treasury, and fifty per cent credited to the primary school fund, or fifty per cent credited to the county.

Now, if we show that Edmonds took one hundred dollars of cash sent to that office; that he defrauded the primary school fund out of fifty dollars,—he put it into his own pocket,—and he defrauded the swamp land fund out of the other fifty dollars,—if we show one case of that kind, it is a sufficient reason why he should be impeached.

The Honorable Manager here read from the statute of 1850.

Now take the case I have stated. A party sends his money

Hosted by Google

to this office to purchase land, and if a Commissioner keeps it and buys scrip with it,—if he does that, he has kept fifty dollars that belonged to the primary school fund, and he has kept fifty dollars that belonged to the county in which the land was located. He has kept one hundred dollars, for this was to be passed to the credit of this fund, and the interest only to be paid over. The one hundred dollars should have been applied to the payment of the outstanding indebtedness of the State, and the interest paid over to the primary school fund for the county, so that, in three different particulars, three different funds of the State would be defrauded. Now, we expect to show that this has been done in repeated instances. And we expect to show further, if I am not greatly mistaken, that lands have been bought by a party residing out of this State, with swamp land scrip, at 70 cents on the dollar; notified since the time that they were issued really at four dollars when it was only ten shillings,—notifying the party there, making the party pay $2.80.

Now, if we show these facts there can be no doubt, I apprehend, about this fifth article being sustained, and I think we shall be able to show all that I have claimed in regard to it.

Under Article VI we expect to show that when the present Commissioner took possession of the office, that there were but eight clerks, I think, in the office; that they have been increased from that number to seventeen or eighteen, and that a certain proportion of them—I do not propose to attack all the gentlemen in that office, for I do not think I would be justified in doing anything of the kind,—but a certain number of those clerks were men of intemperate and unsteady habits, neglecting their work and business there, and that the Commissioner had knowledge of that fact. We expect to be able to show under this article that the Commissioner not only had knowledge, but that he was in the habit of going into their room and drinking with them, and that on certain occasions some of

Hosted by Google

them became so intoxicated that they did not know, the next day, where they went or what they were doing.

Our position being that this is an investigation to determine whether this officer shall be removed for putting an unnecessary number of clerks in that office, if we associate with him, drinking, disregard of law, and going to places of ill-repute, we shall claim that this is sufficient cause for his removal from office.

And I wish to say in regard to the law of 1871, as the question may be raised whether this Court can act upon that law, in regard to the removal of this Commissioner, that I think that so far as that question is concerned, there is no doubt under this proposition that if we have an officer in this State,—a constitutional officer,—who is in the habit of drinking intoxicating liquor to excess, who indulges in habits unbecoming to his dignity as a public officer, the Senate have the power to impeach. I do not think there can be any doubt upon the authorities, so far as I have investigated them, of the power of this Legislature to remove any particular State officers, to impeach them, on account of drunkenness. I think there is no doubt about it at all, regardless of the law of 1871.

We shall also show under Article VI that two or three of these clerks, as charged here, had been in the habit of buying land, indirectly, with other parties, in the name of other parties,—they being interested in the purchase,—in addition to the habits of the clerks.

Under Article VII, the evidence, of course, will be the same as that under the fifth article, in regard to scrip. We shall claim, if we show that parties sent moneys here, under this act of the Legislature referred to—that if parties sent moneys here for swamp land and the Commissioner kept the money and paid for the land in scrip, that he violated this statute, for he is one of the officers that is covered by it. There can be no doubt about it. I think it was a direct violation of his duties,

Hosted by Google

and if we show that fact, as I have no doubt we shall, we shall claim that we have made a case under Article VII.

Now I come to Article VIII, which is for the publication of a paper that is entitled "Every Wednesday Night." Now, what we claim, gentlemen, in regard to that paper, is, that its circulation was an indictable offense; that it was a misdemeanor; that it was obscene and scandalous; that it was, in fact, a libel, upon which an indictment could be based; and that, if you have jurisdiction, as I have no doubt you have, to try matters outside of the office, and if this paper is of such a character as I have stated, that it is perfectly competent for you to take it into consideration. And if we show, as we expect to, that it was circulated—deposited in the postoffice—by the Commissioner, that it is sufficient reason why he should be removed from office. It is no trivial affair. The circulation of this paper is no light matter. It looks to me as though it was a matter of importance. It certainly shows the manner of the mind of the Commissioner. It shows his manner of looking upon these things: provided he is the party that put it in circulation. I submit whether it does not show a looseness in the manner of thinking upon matters of this kind; and whether, if this Commissioner took this paper and went out of his own State and deposited it in the postoffice, it does not show, by that act, also, that he himself, in his sober moments, does not indorse what he was doing? Does it not, in fact, show that he was doing what was wrong, and that he knew it?

And I ask if it is not an insult to the people of this State that he should put in circulation such a document as this is? You have all seen it perhaps, and read it. We claim that it is not only obscene and defamatory, but goes further. It strikes at the religious sentiment of this State, making light of those matters which he ought to have more seriously considered.

Now, we claim that it was not only a violation of the laws of this State, but a violation of the laws of the United States;

Hosted by Google

and I wish to call your attention to the definition of the word "Obscene:"

First. Offensive to chastity and decency; expressing or presenting to the mind or view, something which delicacy, purity, and decency forbid to be exposed; impure: as obscene language; obscene pictures.

Second. Foul; filthy; offensive; disgusting; impure; immodest; indecent; unchaste; lewd.

That is the definition Mr. Webster gives in his dictionary to the word obscene. Now, we claim if this paper comes fully under this definition, that there cannot be any doubt about its being an obscene paper. And if it was an obscene paper it was in direct violation of the laws of Congress, as well as in direct violation of the laws of this State. When he deposited it, too, at Laporte, as we claim he did, and directed it to the offices of this State, we expect to show that the Commissioner of the State Land Office of the State of Michigan, like a man fleeing from crime, went down to Laporte and registered his name as Alexander Haynes; that is, he goes in there in the night and registers his name Alexander Haynes, and hires a boy and does up two bushels of this scandalous newspaper, carries them to the office, and directs them to the people of this State and members of the Legislature of this State, and leading citizens of the State in every part of the State. I submit, if we show that fact, whether it is not an insult to the people who elected him. I submit whether a man who does this is worthy to hold the office of Commissioner of State Lands. I submit whether it is not a matter worthy of consideration, when a trusted officer of this State is prowling around in this way, doing what he knew was wrong, registering himself in assumed names like a horse-thief fleeing from justice. I submit this is a grave matter, and I have no doubt of being able to prove what we say is true in regard to the matter. I understand that he has not denied it.

The facts, of course, under the 8th and 9th articles, you will

Hosted by Google

see, referring to the violation of the laws of Congress, will be the same.

The 10th article reads as follows:

"That said Charles A. Edmonds, Commissioner of the State Land Office, unmindful of the dignity of his office, his duties, his oath of office, and the requirements of the laws of this State, at divers times during his official term as such Commissioner, since the fifth day of July, 1871, at the city of Lansing, and in other places within this State, has been drunk, or so affected by his drinking of intoxicating liquors, as to disgrace his office and unfit him for the discharge of his official duties; and the said Charles A. Edmonds, Commissioner of the State Land Office, did thus and then and there show good cause for his removal from office, under the provisions of an act entitled 'An act to subject all persons holding office under the government of the State of Michigan to removal from office for drunkenness,' approved April 5, 1871."

We expect to show under this article, by quite a number of witnesses, that the Commissioner, here in this city of Lansing, and at other places, has been intoxicated on several occasions, so much so that it has been necessary that he should have assistance to retire, and the testimony under this charge, of course, will be confined directly to that of being intoxicated. I do not think it is necessary to take up time under this article.

Under Article XI, the one charging adultery, we expect to be able to show—and I regret that it is so—that the Commissioner has been guilty of the charges brought against him. We expect to show, by two or three witnesses, that he has visited a house of ill-repute in this city. And we expect to show, by witnesses to whose testimony you will give full credit, that on three difierent occasions they discovered, or saw, such circumstances as would lead any man exercising sound discretion to come to the conclusion that he had been guilty of the crime. Here, of course, you all understand that this charge is

Hosted by Google

one which it is not expected can be proved by the witnesses from actual observation, but that it is shown by circumstances. And we expect to show, by a party that we have no doubt will testify to the truth, that on one occasion he was seen to come out of a room in the Lansing House,—room No. 89, I think,—in the morning, and a strange woman that did not belong to the house came out of the same room, and it was not Mr. Edmonds' wife, and we expect to show that he is a married man; and that on another occasion one of the men of the house found him in the morning, about nine o'clock, locked in his room there with a woman that was not his wife, and that the woman was turned away from the house; and that on another occasion, we expect to show, by two witnesses, that he, with one of his clerks, in the day-time, about two o'clock in the afternoon, was seen in the Lansing House. Two strange women were there who, it was reported, were from Saginaw,—I do not know whether they came there to stay or not,—and that Mr. Edmonds retired to room 128 with one of the women; that the clerk, Mr. Clark, went to 78, which was Mr. Edmon ds other room, with the other woman, and that they were in their rooms a certain time. We can show these facts and circumstances, sufficient in the law to convict him of the crime we have charged against him.

We shall insist with all earnestness and candor that if you are satisfied from the testimony that he is guilty of the offense charged, and in the manner which we claim it to have been committed, you ought not to hesitate a moment in removing him from the office. For if he has so little regard for the proprieties of life, and for the position that he occupies, and the dignity of the State, as to do this in a public house in the day-time, under the circumstances which we have alleged, it shows that he is a man, as we shall claim, who is not fit to be trusted by the people of the State of Michigan.

Now I pass from these articles as briefly as I can. I called your attention to the facts which we expect to prove. We

Hosted by Google

expect to be able to substantiate these facts. I desire to call your attention, just for a moment, to the office of Commissioner of State Lands; and I claim that office is one of the most important in this State; and that if there is an office in the State that requires in its possessor sterling integrity it is that office; because there are greater temptations thrown around a man who holds that position than any other office in this State.

There are great interests under this charge, and the checks upon that office are of such a character that in fact they are not worth anything. And when you take into consideration the fact that there is placed in his hands the sale of the lands of this State, which amount to between three and four million of acres or so, varying in price from three or four dollars to ten shillings, amounting to over six million dollars, and that this land was covered by valuable timber, and that there is a continual strife among the men buying land, to take advantage of each other, in their scrabble for this valuable pine land—when you take into consideration these things, we come to the conclusion that if there is anywhere that honesty is required, and integrity is required, it is in that office. And we shall urge, if we show these things, that it is a reason why this officer should be removed.

I can readily see that there might be a case where I might not be so urgent to remove an officer, on the same state of facts, as I would be to remove him. If he had any other office there might not be the temptation. But we insist, if we show this state of facts, that it will be sufficient ground to remove him from this office. And that is all there is in this proceeding. It is merely a proceeding to try the question whether the Commissioner is a competent and proper person to hold the office he now holds.

I do not know that I care to say anything more on the question.

Hosted by Google

On motion of Mr. Moffatt, the Senate, sitting as a Court of Impeachment, adjourned until 10 o'clock A. M. to-morrow.

Thursday, A. M., May 2, 1872.

The President *pro tem.* called the Senate to order at ten minutes past ten o'clock.

The Sergeant-at-Arms opened the Court with the usual proclamation.

The Secretary called the roll, and a quorum of the Senate was present.

Mr. Romeyn—Mr. President: I would like to inquire what members of the Senate are absent without leave.

The Presiding officer—The Secretary will imform the gentleman.

The Secretary—Senators Bennett, Brownell, and Sheley.

The Presiding Officer—Gentlemen Managers on the part of the House of Representatives, you will proceed in support of your articles of impeachment. Senators will please give their attention.

Mr. Romeyn—Mr. President: Before the Gentlemen Managers on the part of the House proceed with the testimony, I will send to the Secretary's desk a paper that I have here.

The Secretary read the paper, as follows:

Considering, The character of the proceeding now pending before the Senate of Michigan, to wit: the trial of an impeachment found by the House of Representatives against a high officer of the State for corrupt conduct in office and for crimes and misdemeanors;

Considering, That the Senate sitting as a Court of Impeachment, are judges both of law and fact, and that the reasons for the exclusion of evidence on a trial before an ordinary court, when the questions of law and fact are distinguished

Hosted by Google

from each other, as being the one the province of the court and the other of the jury, do not apply to this proceeding, and that according to the usage in the trial of impeachments, a degree of latitude of inquiry and freedom from technicality properly obtain, and

Considering, That the members of the Senate must frequently differ in opinion as to the admissibility of the evidence offered;

Therefore, For the removal of such differences and for the dispatch of business, it is advisable that all evidence offered on either side, not trivial or obviously irrelevant, shall be received without objection, it being understood that the same when admitted shall be subject to discussion and comparison at the bar for the determination of its competency and value, and shall be duly sifted and weighed by the Senators in determining their final judgment.

Mr. Romeyn—I move the adoption of that as a standing order of the Senate, during this trial.

Mr. Shipman—Will it be proper for counsel to be heard on that?

The Presiding Officer—It would be proper.

Mr. Shipman—I hope that resolution will not be adopted. It seems to me an extraordinary resolution. It appears to me, that it is a rule very extraordinary for the government of a trial,—one that was never heard of as far as my experience goes, never known in court, and which may work very great injury to the respondent. As I understand the rules of law, and the proceedings in trials of this kind in the Senate, they are to be governed somewhat by the proceedings in courts of law. At all events, the same reasons which led to the establishment of rules in courts of law, and in proceedings there, in the ordinary tribunals, apply here. "Like reasons do not make like law," is the maxim, and we think it is allowing too much latitude, to allow the parties to introduce such evidence as they choose,—as I understand the reading of this resolution contemplates,—and then to attempt to sift it out afterwards.

Hosted by Google

The consequence would be that you would have a vast amount of testimony that would be wholly irrelevant to the case. The bearing would be exceedingly remote, at all events, and you would have more upon your hands than you could very well sift down, in the time allowed you; and you could hardly be expected to go over all of this testimony, and sift the good from the bad. At all events, you could not do it with the readiness and the ease with which you could perform the same work if you are allowed to take it up as they take it in trials where the proof is offered. Proof ought not to be allowed in any case that is not relevant to the issue raised. It must support the allegations on one side, or support the defense upon the other. Manifestly any other testimony has no business in the case. It only lumbers it up; and you predjudice a case very much by introducing irrelevant matters. Why, under such a rule as that, to a great degree you throw down the barriers here; you do not try the respondent on the charges brought against him by the House, and it is admitted by the Honorable Managers that they can only properly present here charges and matters which have been passed upon by the House. But under this extraordinary rule you throw wide open the gates; you might introduce anything and everything. Why do you have articles presented, except to inform the party of what he has to meet? These articles perform the part of a pleading, and a pleading is a statement of a cause of action in a civil suit, or, if it be in a criminal matter, it is to inform the accused what he is charged with, specifically, so that he may know what to meet. And the evidence should bear on that. If it tends to prove the fact, although remotely, it would be admissible, but I think that the ordinary rule should obtain, so that we may sift the testimony when it is offered, the good from the bad; because it is only the bad that we shall have anything to do with. I submit that under this rule here you might just as well let parties come in and file affidavits. There is no need of a proceeding of this kind,—no need of any rules

Hosted by Google

in regard to the admissibility of testimony. You might as well get it all in and then look it all over, and sift it out afterwards. Could we introduce, would the Honorable Managers upon the other side consent to our introducing, any testimony which we might choose, however remote and distant from the case, and that could have no real bearing upon the facts alleged, and then sift it down afterwards? They ought not to allow it. It would be unlawyerlike to do it. It is not the usual way of conducting judicial proceedings; and I submit to this honorable body that this rule ought not be adopted. It is a rule of injustice. It is a rule that the experience of all courts has taught it was unsafe to follow. There is no court that follows such a rule as that, and the very fact that they have not followed such a rule and that they have established exactly the opposite rule, namely: that you shall have the right to object to testimony that is irrelevant when it is offered, it seems to me establishes the very strongest reason for continuing to adhere to that rule. This is a court; it is not above law. Your oaths are, here to decide according to law and evidence,—the laws as made,—the established laws. Now, the rule governing these tribunals is, as was announced by one of the Honorable Managers yesterday, in regard to the admission of testimony, substantially the same as in courts of law. Why should we now depart from it? I hope that it may not be done. We will not be captious in this matter,—we will endeavor to throw the doors wide open. We will endeavor to make no objection for the purpose of delay, but let the matter be sifted fairly and fully, and all the evidence that could have a bearing upon the case be admitted; but we seriously object to throwing the doors open to this wide latitude and license that it seems to me one contemplated by that resolution. Perhaps I do not fully comprehend it, but it sounds so to me. I hope that it may not be adopted.

Mr. Romeyn—I am not very strenuous about the adoption—

The Presiding Officer—Discussion on the part of Senators

Hosted by Google

is out of order, under the rules. Do the Honorable Managers desire to be heard upon this question?

Mr. Manager Grosvenor—Mr. President: The Managers are quite willing that rule should be adopted, because it seems to tend to the furtherance and rapidity of this trial. It is not an unusual rule in courts where the trier is the judge. Those of us who have practiced in the courts of this State know very well that in the trial of a case before a judge of the circuit, who is to judge of the law and the facts, he will often hear testimony and say, "It shall be received under objection, and if at the conclusion of the matter I find it irrelevant, having no bearing, I will reject it," and trials are heard every day upon that principle in the circuit courts of our State where the judge is sitting alone. But there would be manifest impropriety in adopting that rule in case these Senators were sitting as a jury, and you, Mr. President, was sitting as a judge, and they were bound to take the facts from the witnesses and the law from the court. There I can see manifest injustice, because a case may be prejudiced in the minds of jurors that could not be prejudiced in the mind of a judge. I apprehend that this motion was made, or the resolution offered, rather, for the furtherance of justice, for the sake of saving time and expediting this trial. In fact I had made the proposition to counsel this morning to do that,—substantially the same thing,—to allow all testimony to be admitted here bearing upon the articles of impeachment, whether for or against, subject to any exception that counsel might take upon the argument, if it was only relevant to the articles,—to some one of the articles. If it had a bearing upon the articles, admit it, for or against; not to restrict the line of inquiry, but to extend it to any and all matters within his official term,—the official term of the respondent.

I can see no injustice to the people, I can see no injustice to the respondent. We will take Article VIII, which I think charges him with the circulation of this paper. The testimony will be concise and to the point: Did he circulate the paper?

Hosted by Google

Now, upon the final adjudication upon that, the Senate must find whether the facts charged are true,—have been proven,—then, whether, if these facts have been proven, does it constitute an offense under the Constitution of this State; so that when they vote for a conviction under that article they vote that the facts charged have been proved, and as a conclusion of law, that it is a violation,—so that they vote separately upon each one of these articles. Now, if this Senate, on the fin a adjudication here, should come to the conclusion that the facts proved in Article VIII were true, but deny the law; they vote against it; can it prejudice them? They might all believe the facts proven, to have been well proven, but they may deny the conclusion, that he did then and there violate the Constitution of this State. So I cannot see that any damage can accrue from the testimony upon that article. It could not prejudice the testimony upon any other article.

It could not affect his misconduct in office,—the charges affecting his official conduct, particularly. I am unable to see why it would damage the respondent more than the people. It would certainly tend to shorten this trial very much; because, if we are to argue here upon every objection that may be made, and the Senate chamber is to be cleared, and you to deliberate upon each one, when in the end you have got to deliberate upon them again, you waste time. The question is, will any injustice accrue to the people or to the respondent, by admitting that testimony? These Senators are sitting here as judges, not as a jury. They are to weigh this evidence, and they will weigh it on each article as they come to deliberate upon it. It certainly would be a very great saving of time. Witnesses are here from abroad, detained at a good deal of expense and a good deal of inconvenience to the public. If, for instance, we present this morning the testimony of witnesses from abroad, in regard to the circulation of this paper, and objection is made as to the admissibility of it, then follows a long and tedious argument upon the construction of that clause in the Constitution, what is meant by crimes and

Hosted by Google

misdemeanors,—are they impeachable? and the whole question then will have to be argued again four times, and perhaps five, in the final close, because counsel would not be contented, perhaps,—would not be satisfied,—to leave it upon the decision of the Senate at that time. There may be other testimony during the trial bearing on it. I believe it would be just as damaging to the people as to the respondent. I am handed by my colleague some authority upon that subject, perhaps to show that the rules of evidence in this tribunal are governed by its own will, its own idea of propriety and justice, and not upon any technical rules governing common-law proceedings.

In the opinion of the court, one of the judges, Mr. Sumner, in delivering the opinion upon the subject of rules of evidence, says:

"From the form of procedure, I pass to the rules of evidence; and here again the Senate must avoid technicalities, and not allow any artificial rule to shut out the truth. It would allow no such thing on the expulsion of a Senator,—how can it allow any such thing on the expulsion of the President? On this account I voted to admit all evidence that was offered on the trial, believing in the first place it ought to be heard and considered."

He lays down that rule of evidence in delivering his opinion. I would shut out no part of the evidence,—hear all the facts in the case. Senators are here to inquire, not whether this man has committed a crime, but whether his conduct has been such during his official term as to warrant the people in keeping him there longer. It is simply to turn him out of office. It is to sit in judgment on the case, and to discover whether he is worthy longer to fill that office,—that place where the people have put him. The people have put him there. The people, by their representatives, are about to consider whether he is worthy to remain. That is the question. It is not whether he is to be incarcerated in prison, whether he is to be deprived of his property, whether he is to be punished for crime. We have no power

Hosted by Google

to punish under the Constitution. It is simply an inquiry into the facts in the simplest form possible, to inquire whether he is a man of such vice and immorality as to render it disgraceful to the people of the State, longer to continue him in that position. That is all. Now, then, will you exclude any testimony? Are you not disposed to hear all that may be said concerning these articles of impeachment, and touching the defense. May we not say it at once,—have one ruling on that, and not have this technical delay—these lawyers' quibbles—that are to be interposed from time to time between the administration of justice, and might in this case, or are you to have one decision? It seems to me it is wise to have a rule. I do not comprehend, perhaps, all that was contained in that. I did not understand the reading of that rule to the extent that my brother Shipman has stated,—that it let in any and all testimony, whether relevant or irrelevant, but any and all testimony pointing to these articles in which he is charged with an offense or offenses,—anything that points to his guilt, or tends to excuse him from the acts charged,—to show that he is guilty or not guilty, and not call upon you now, in a preliminary motion, to construe that Constitution and say here and now, before the testimony is produced, whether the offenses charged here are impeachable or not. We are willing to consent to it; and we think it is in furtherance of the rights and interests of the people, and not prejudicial to anybody,—willing to open the door wide, and the respondent by his counsel has frequently affirmed upon this floor, that he is willing—nay, he is anxious—to have this matter investigated. When he asked for a continuance here, it was that he might make preparation to have a full and fair examination.

In his letter to the committee of investigation, he prayed them to make such disposition of the matter as would allow him to come in and show all the facts. It is for his benefit to have all the evidence that has any bearing on these charges brought out, without regard to objection. We are willing to stand upon that ourselves; we can see no harm to the people.

Hosted by Google

There is no disposition to hide anything here. If he can show any excuse for his official acts as charged here, the Managers would be very glad to have it brought out, without any regard to any technicalities applicable to common-law proceedings. We are not here to try this thing in gold balances. We are to see, substantially, whether he is guilty, as charged, of any or all of these offenses charged, and not on every question that may be asked a witness, or the introduction of a witness called upon, to construe, over and over again, that provision of the Constitution all the way, and then, if any objection should be made as to the admissibility of evidence upon the last four articles, as to his private vices and immoralities, you have got to sit down and consider the grave questions, What are impeachable offenses? and then consider it in the end.

Mr. Shipman—Mr. President: There are no reasons that have been advanced here by the Honorable Managers, which in any degree change my prior opinion of this matter, or convince me that this will be otherwise than an unjust measure to adopt. Why should we depart from the ordinary rules in these cases, as well as in courts of law?

Have they not been wisely established. Is it not better to follow the old landmarks, than it is now to depart from them and make new ones in this hasty manner? Is it not far better to follow the old paths than to seek these new and untrodden ones?

The object here is—or it may not have been the object—but the result will be, to adopt the rule as construed by the Honorable Managers upon the other side, to make the Senate a sort of reservoir into which they can put all manner of stuff. They can empty into it such testimony as they choose,—the statements of anybody.

Now, the human mind, Mr. President, is not so constructed that it can receive anything without having an impression about it. It is impressed in one way or the other.

If a man swears, upon the witness stand, aught in regard to

Hosted by Google

the respondent, it affects the minds of the triers, if they are human; it prejudices their minds for or against him.

Now, anything that comes in, that does not bear upon the issue, they have no right to consider at all,—none whatever. They have no right to be prejudiced about it. They have no right to allow a bias to come into their minds about it.

They are to try him upon the facts charged, and upon none other. If there be any testimony offered by the Managers, bearing directly or indirectly,—tending to prove the facts charged,—we can not shut it out. But he has attempted here to create, it seems to me, a false impression in the minds of the Senate upon another proposition, and that is in regard to technical questions, quibbling arguments, etc.

I stated to him, and I here state to the Senate, that we propose to throw the doors wide open in regard to all Land Office proceedings.

So far as the other matters are concerned, outside of that, we propose to raise the question when we come to it at once, and end it there.

If we are ruled against, the testimony will come in. If the ruling shall be in our favor, it will not come in.

Now supposing they were to introduce testimony under the 8th, 9th and 11th articles,—for we do not propose to object to any testimony under the tenth at all, but under these three articles, testimony should come in here, and then, as the Honorable Manager suggests, it should be left to the triers afterwards to determine and settle the questions of law, and of fact,—would they not have a bearing upon the case.

Furthermore, the respondent himself is here basing his defense, perhaps, on that,—upon the law. Having confidence in the law, he would not introduce any counter-proof.

I pronounce some of the terms there and charges to be absolutely without foundation; and I rest the whole upon the law.

Upon this matter I would not take up the time of the Senate in introducing evidence. What would gentlemen say?

Hosted by Google

What would they naturally say? Perhaps, after all, this party is guilty of the act; and we should do substantial justice, perhaps, by holding the rule that way.

These things all leave their influence upon men. They will look at matters somewhat as they hear,—lawyers will,—everybody will.

We only seek to do what all courts have done; all courts of impeachment; all courts where offenses are tried, namely, to wit: the testimony that shall be introduced; that which should go in here, aud that which should not.

The remark of Mr. Sumner, in the Andrew Johnson trial, is laid down very broadly.

I do not wish the Senate to prejudge that question. It is in exact opposition, as I understand, to the position taken by the first Manager yesterday, in his opening address in this case; and we shall endeavor to settle that rule before we get through, and also to settle what are the matters to be tried here.

It is said that he is not here to be tried for crimes,—that it is a sort of proceeding in which the Senate are to be governed by no laws. They are as lawless as the savages in the matter. In other words they have no rules to guide them. That may be so, but I do not believe it. We do not concede it.

I ask the Senate not to pass upon that matter,—to leave that question. That is not the question here;—we do not wish to be prejudiced upon that.

The question simply is, whether we shall be governed by the usual rules in this case; and it seems to me that every reason that governs courts will in this matter apply with equal force to this.

The question that will arise upon these last articles, is one that we shall raise and discuss. It will probably be about the only question that really will arise in the discussion of the testimony at all.

I hope the Senate will not be frightened by any statements of that kind. We have got to use some little sense in this matter. We do not propose to weary the Senate by objections;

Hosted by Google

we know the effect of so doing. This matter is to be investigated, whether we will or whether we will not. We know that it is to be investigated, and it is to our interest—to say nothing about your right—to have the trial proceed speedily, and without quibbles, or unnecessary objections on our part.

We shall raise no objection, without, in our view, it has real merit. And I cannot now see, although I know not what may arise, any occasion to raise objections, except upon the one point which we have mentioned.

If evidence be introduced here on these three articles, then we must introduce our evidence against them, must we not? We have seen how unwilling Senators were to judge upon the question without some discussion before them.

Whatever the law may be as a matter of safety, we would be compelled to introduce testimony upon the vast amount of stuff here which was irrelevant and ought not to be in the case. Now, I hope—earnestly hope—that the rules will not be departed from.

Lawyers cannot know how to try cases with the doors thrown open in that manner; it is a new way to try a case. I never knew a case to be so tried where there was a jury.

It is true that upon certain specific things testimony is sometimes introduced before a judge, by comment, and only by comment, and afterwards the court may rule upon it. It is sometimes received under a formal objection and afterwards ruled upon, and not by comment; but if you insist upon a ruling at the time the testimony is introduced, I do not know that any court would consider that they had a right to depart from the practice in such cases.

Seek ye the old paths. In that path we respectfully ask the Senate to keep, and not adopt this rule.

Mr. McGowan—Mr. President: I only meant to add a word.

The order which is now pending before the Senate, if it means anything, means to enlarge the rule of evidence as we have it in the courts.

Hosted by Google

Now it is conceded on the part of the counsel for the respondent, that whatever is relevant, either immediately or indirectly, to the issue before the court, we are willing to admit in evidence.

If I understand the Hon. Manager, that is all that is claimed on the part of the Managers; that whatever may have any bearing upon the issue as it is finally joined before the court, may come in here; but I say in one specific thing, it may work a great hardship to the respondent, and I simply desire to call the attention of the Senators to that one thing.

The Senate does not wish to keep this defendant here to examine into a matter on which they have no right to pass, and over which they have no jurisdiction. They do not care to do that.

Suppose, for instance, that the Honorable Managers on behalf of the House had charged us with crimes entirely outside of our official conduct, and outside of any time that they could possibly have entered into the investigation; suppose they had gone back to the very childhood of this respondent, and charged him with an offense which he committed when a a mere lad, would the Senate sit here and hear evidence concerning it, and then decide afterwards, with regard to the law and the fact? Then suppose we are able to show, Senators, when this question arises, with regard to the crimes that are now charged against this respondent outside of his official conduct, clearly to the mind of the whole body—this whole court—that these are offenses over which they have no jurisdiction; then have we not shortened this trial? Have we not cut out from the proceedings here, all testimony irrelevant thereto, and is it not shortened by so much time? And does it make any difference to the Senators whether they hear that discussion now, or hear it a week from now?

Those questions have been asked directly to this Senate, on behalf of the respondent, whether they will hear testimony under these articles.

Now, it seems to me, if I understand the scope of the order

Hosted by Google

that is now pending, that it will be to admit testimony upon everything that is contained in the articles of impeachment; and that upon everything that is offered there shall be no discussion. It means that, or it means nothing.

There is no need of adopting the rule, unless it is some change of the rule of evidence laid down in courts, for that will be the rule that will maintain if this rule is not adopted.

If it is to broaden the rule at all, how much does it broaden it? If it broadens it, it seems to me that it must be plain, Mr. President, to every member of the Senate, that it may work a great hardship to this respondent in that regard.

We have depended, as we felt we had a right to depend, upon what we honestly believed to be the law in this case, and have prepared ourselves accordingly.

The Presiding Officer—The question is upon the proposition of the Senator from the First. Is the Senate ready for the question.

Mr. Wheeler—Upon that proposition I ask the ayes and nays.

The Presiding Officer—It will be necessary to take the ayes and nays under the rules, without any motion.

The Secretary called the roll, and Mr. Romeyn did not vote.

Mr. Moffatt moved that Senator Romeyn be excused from voting.

The motion was not agreed to, and Mr. Romeyn voted No.

The resolution offered by Mr. Romeyn was not adopted.

Mr. Moffatt—Mr. President: I would like to have read at the Secretary's desk, Rule XVII.

The Secretary read the rule, as follows:

"All preliminary or interlocutory questions, and all motions, may be argued for not exceeding thirty minutes on each side, unless the Senate, by order, extend the time."

Mr. Moffatt—I offer the following:

Ordered, That the Secretary of the Senate be instructed to cause to be forwarded to each newspaper published in the State, to the judges of the Supreme and circuit courts, and

Hosted by Google

county clerks, the daily journals of the Senate, sitting as a Court of Impeachment for the trial of Charles A. Edmonds, and of the "Impeachment Proceedings;"

Which motion prevailed.

The Presiding Officer—Gentleman Managers upon the part of the House of Representatives: You will now proceed in support of your articles of impeachment. Senators will give their attention.

Mr. Shipman—Mr. President, before the Managers proceed, I wish to raise one proposition here, not to take up any time, but I want to state the position we are in. I saw the Managers this morning, and stated to them the facts in the case, and now propose to state them to the Senate, and wished to know what they intended to do. A resolution was submitted here yesterday—or a proposition, rather—containing three questions upon which we asked the ruling of the Senate without argument. They were referred back and declined. I think they declined to act upon the questions until they should be raised upon the introduction of testimony, and then they were laid upon the table. I presume and suppose that of course the object was to hear argument upon these propositions, and the question really is an important one; and the precedent to be established should be a correct one. I suppose that was the reason of Senators' taking that course with the proposition. It now lies upon the table. I understand it to be the intention of the Managers to introduce testimony this morning upon one or two articles,—Articles VIII and IX, I think,—one or both of them, and I ask this of the Senate, that they do not introduce testimony under them this morning, as I requested then that they would not, until we had a little time to prepare upon it. We are not ready upon that question, and I will call the attention of the Senate to that fact, that when we asked for this adjournment, we asked it until the 15th of May. We stated that the way the case appeared to us, we thought we could not be ready before that time. The difficulties that were in front of us, we did not so

Hosted by Google

fully appreciate as we have since. Certainly, we have worked faithfully and hard in this matter, and have got such things ready as we could; but we are not ready for the trial now; but we do not propose to throw any obstacle in the way; we propose to go right on with the trial. We only ask that you may, if the Managers will not, grant this favor to us: that you will exercise the power which resides in the Senate, as to directing them as to the order of proof. This is what we ask, and this only. In other words, that no evidence shall be admitted under these articles until, say, to-morrow morning; I will endeavor to get ready by that time, even if I have to work all night to do it. So far as I am concerned, and I think I can pledge my brother, that we will faithfully endeavor to be ready by that time; but we are not ready this morning; and we therefore hope that no evidence may be received under these articles. As to all other matters under the ninth, or any of the articles except the three, we will raise no objection at all; and this is simply to defer the testimony that may be introduced under these, or the evidence that will be sought to be introduced, until we shall have time to present the matter to the Senate.

The Presiding Officer—There is no question before the Senate, and until there is objection we will hear discussion upon the request made by the council for the respondent.

Mr. Manager Huston—Mr. President, I do not desire to take up any time if there is no question. There is no occasion for getting up an argument. If we can proceed, that is all we desire. If they propose to act upon the suggestion, I have something to say. If we are to be at liberty to introduce our witnesses now, I do not care to reply to the remarks of the gentlemen at all.

The Presiding Officer—The Chair cannot assume to state what will be the action of the Senate.

Mr. Manager Grosvener—Mr. President, we offer them the first witness, Frank H. Kirk. We ask that he may be sworn and examined.

Hosted by Google

Mr. Shipman—I, of course, do not know upon which point they offer him, but as soon as I can write this request and get it in form before the Senate, I will present it.

The Presiding Officer—The Manager will delay one moment, and let the counsel prepare his motion.

Mr. Shipman—The respondent moves that no evidence be received under the eighth, ninth, and eleventh articles before to-morrow morning.

The motion was sent to the Secretary's desk and read.

The Presiding Officer—Do the Honorable Managers wish to be heard upon the question?

Mr. Manager Huston—Mr. President: The counsel for the respondent, thus far in this trial, has been a great stickler for precedents, and has insisted strenuously that we should not depart from the old pathways and the old landmarks. Now I don't know of any rule in court by which it shall be decided upon what count in a declaration, or in an indictment, the plaintiff, or the people's attorney, or the prosecuting attorney, as the case may be, shall not proceed with his testimony. I understand the rule to be, when parties come into court for trial, if they do not make application and get a continuance of the case upon a proper showing, that they are expected to be ready for the trial of the case. And it seems to me it would be an extraordinary power, for the Senate to say upon what particular articles of this impeachment we should introduce our evidence first.

Now, I suppose it is fair to presume that the counsel for the respondent, when they come to their defense, know what part of their defense it is best for them to present first, and that this Court will not interfere with their mode of procedure, providing they proceed according to law, and I say the same in regard to the management of this case by the Managers. I apprehend you will not say to us where we shall commence, and that you cannot judge. You are presumed not to know anything about this case,—not to have investigated it,—not to

Hosted by Google

know the facts. You have come here somewhat like a piece of blank paper, to be written upon. And that how we should commence, what witnesses we should first swear, seems to me must be left entirely within the discretion of the Managers; and we submit that we are ready this morning, upon Articles VIII and IX, to introduce our proof. Our witnesses are here.

Upon the other matters, our witnesses are not all of them here,—not as we desire to have them sworn. They are not present to be introduced, and we say that there is no precedent —there is no rule in court—that will say in what order testimony shall be introduced. It is left to the parties themselves, and we claim that we have the right here. That is all we ask in regard to the matter.

This case has been continued for the purpose of preparing for this trial. We are ready to proceed and we claim we have a right to proceed in our own way, so far as the introduction of the witnesses is concerned, and after we have closed our case, we claim that the counsel for the respondent would have the same right, and we submit to Senators that if the rule is good in one case, it is good in the other; and we insist that the rule be carried out and that we be allowed to proceed with our testimony.

Mr. Shipman—Mr. President, it seems to me that we are not asking anything unreasonable in this matter; the Senate are aware of the amount of work that we have had thrown upon us, and we have not had the assistance even in the matter that we expected to have, and I can state that we have been really overworked to get as fully prepared as we are, and we depended upon making some preparation to meet the matters that might come out upon the trial as the trial progressed. I regret now that I must take up these few minutes even in raising this question before the Senate. The question involved there we will now submit to the Senate without argument, as we offered to do yesterday. If you desire to pass a point we will make again the same offer that we did yesterday, and sub-

Hosted by Google

mit to the ruling. I suppose, however, that as the question is really an important one, you wish to make a right decision, and that was the object in sending it back here,—the question being, what are impeachable offenses? Now, it is certainly an important question, and the Senate of this State should desire to make a right decision, and, therefore, to be able to do so, that the matter should be presented to them. We cannot do it this morning, and we ask you to exercise a power that is beyond all question in you and leave this matter upon the table, where it is now, until to-morrow morning. Strictly, I suppose, that the offer having been introduced, testimony under the articles would be out of order, so long as that motion is upon the table. Perhaps I am wrong in this. The Senate will understand that matter better than I. I hope that it may be allowed, and we will take up the question to-morrow morning as rapidly as possible and dispose of it.

Mr. Manager Grosvenor—Mr. President, to my mind this begging position on the part of the respondent's counsel at this state of the trial is extraordinary. On the eleventh or twelfth day of March these articles of impeachment were filed—

Mr. Manager Huston (interrupting)—April.

Mr. Manager Grosvenor—April, I would say—counsel asked time to prepare. These articles were then as plain and as prominent as they are now, and the great question, the grave question involved, must have been suggested to his mind then as plainly as now. The gentleman submitted his resolutions here yesterday, asking the Senate to decide it without argument. Now it is very strange, to my mind, that learned counsel come into this matter, after the time given, and say they are not prepared to argue the main and principal question of law in this case. Upon the question of courtesy the Managers would have been very willing to have granted this request this morning, had we deemed it possible to do so. We had these witnesses to prove this case in attendance yesterday. They are foreign witnesses; they are officers

Hosted by Google

of the United States; they are kept here with a good deal of expense and a good deal of trouble, and I stated to the gentleman, Mr. Shipman, when he made this request this morning, I will agree, or we will agree, that this testimony affecting this paper "Every Wednesday Night," shall be put in,—it may be put in under objections,—and let these witnesses go home, and then we will introduce no other testimony upon all the other articles involving immorality until you can have time to prepare if you so desire. We are compelled to present these witnesses to the Senate this morning or not at all. We supposed that these witnesses would occupy a portion of the day. We are not prepared to present testimony upon any other article. We make the same offer to the gentleman now, that testimony may be presented under any and all exceptions that they may wish to make upon the trial, or upon the argument, and we will postpone the testimony upon the other articles, where the witnesses are here and we can get them. These witnesses are living out of the State, that it is necessary to prove this by; one is a postmaster, and one is a United States officer connected with the revenue department; and they are kept here with a good deal of trouble and a good deal of expense. We want their testimony in here, and let them go home. We think it cannot prejudice him, and we trust that the Senate will not enforce upon us this extraordinary rule.

Mr. Shipman—As the motion remains I merely say this in reply, that I stated to the Managers this morning that if these witnesses had got to go home, that we would take their testimony, after the adjournment of the Senate, before any officer, informally, and then, if it should be ruled to be proper here by the Senate, it could be brought before them. And as to the other remark of the Honorable Manager I don't think is necessary for me to reply.

The Presiding Officer—The question is upon the motion made by the counsel for the respondent. Are you ready for the question?

Hosted by Google

Mr. Romeyn—I don't think I quite understand the form of the question. Is it that time should be granted?

The Presiding Officer—The Secretary will read the motion.

The Secretary read the motion.

The motion did not prevail.

The Presiding Officer—The Gentleman Managers will proceed.

TESTIMONY OF FRANCIS H. KIRK.

Francis H. Kirk, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Grosvenor:

Question. Mr. Kirk; where do you reside?

Answer. Now in Michigan, sir? formerly in Laporte.

Q. Do you know a man by the name of Charles A. Edmonds?

A. I have heard him spoken of by that name.

Q. Will you look at that table, and say whether you recognize any gentleman at that table,—the first three there?

A. Yes, sir.

Q. Which one do you recognize as having seen before?

A. The one at the end of the table [Mr. Edmonds].

Q. Where did you see him?

A. At Laporte.

Q. Under what circumstances did you first see him, and when?

Mr. Shipman—Mr. President: We beg leave now to interpose an objection to this testimony. I suppose sufficient of it has been developed to make it appear now to the Court upon which article the testimony is sought to be introduced,—I suppose upon the ninth article; and upon this objection we wish to be heard,—though not prepared we still desire to be heard. I will ask the indulgence of the Senate until I can simply go to the library and get one or two books and a memorandum that I have there, and present it as best we may.

Hosted by Google

The Presiding Officer—The counsel can take time to get all the authorities which he desires.

[Mr. Shipman retired from the Senate chamber and soon after returned and took his place within the bar.]

The Presiding Officer—Are the counsel ready to proceed?

Mr. Shipman—Mr. President, we could not take up the questions involved here and do justice to them in the time we have this morning, and I do not suppose the Senate would wish them to be submitted unless they were properly presented. I have consulted with the Managers and they propose to introduce testimony, if we will consent now, out of the State, and one witness in the State.

Mr. Manager Grosvenor—One or two, perhaps Mr. Baker to a single point connected with these two articles.

Mr. Shipman—Yes; as to the paper and envelope, to distribute the paper and to let them come in under that objection and save our rights to object afterwards; and we think it is better to take that course.

The Presiding Officer—You may proceed.

Q. You stated that you saw him first at Laporte.

A. Yes, sir.

Q. When was that?

A. The ninth of April, I think.

Q. About the ninth of April?

A. Yes.

Q. The ninth of March or April; was it at that time?

A. March.

Q. You wish to correct that then. It was March?

A. Yes, sir.

Q. At what place in Laporte?

A. At the Merrill House.

Q. Were you engaged and connected with the hotel?

A. I was, sir.

Q. In what capacity?

A. Clerk.

Hosted by Google

Q. Will you state whether the respondent entered his name there or entered any name in the register?

A. I did not see the gentleman write his name. He called for a room; I asked what name, and he pointed to a name that was registered.

Q. You asked him for his name, and he pointed?

A. Yes.

Q. Will you look upon that. [Piece of paper.]

A. That is the name, sir.

Q. That is the name he pointed to?

A. Yes, sir.

Q. Was the name of Charles A. Edmonds registered that morning, that day—his arrival, on your register?

A. I think not, sir.

Q. Did you know anything of his business there?

A. Well, very little, sir.

Q. State what you know of his business there?

A. He called for a room. I assigned him a room. I was quite busy, and he engaged the services of a boy to help him fold some papers.

Q. Called for that, did he?

A. Yes, sir.

Q. What boy did you assign him?

A. Mr. Merrill's, one of Mr. Merrill's sons.

Q. What was his name?

A. Addison Merrill, I think.

Q. Son of the proprietor?

A. Son of the proprietor, sir.

Q. Do you recognize that paper [paper previously shown witness] as being a part of your register?

A. Yes, sir.

Q. Will you state how it came to be cut out?

A. I do not know.

Q. Or who cut it out?

A. No, sir.

Hosted by Google

Q. You recognize that as the signature shown you by him?

A. Yes, sir.

Q. How long did he remain?

A. I think he left in the afternoon, soon after dinner.

Q. Of the same day he arrived?

A. Of the same day.

Q. In what direction did he go?

A. I could not say, sir.

Q. Do you know what train he took?

A. I do not.

Q. Have you any doubt about that gentleman sitting there [pointing to Mr. Edmonds] being the man?

A. No, sir.

Q. Did you see any papers which he had or left in his room?

A. I saw one in the afternoon, sir.

Q. Where did you see it?

A. It is my custom always to go through the house in the afternoon, to see that the rooms are in a proper shape, and in that room, at the foot of the bed, there lay one of those papers.

Q. Would you recognize the paper if you saw it?

A. Yes, sir.

Q. State whether that is the paper or one like it. [Paper shown witness.]

A. This is like it.

Q. What did you do with that paper?

A. I simply took it to the office. I paid very little attention to it. It was in the office there for several days: what became of it, I do not know.

Q. You had no conversation with him about these papers?

A. No, sir.

Q. Have you stated all you know in regard to his coming there and going away, and the transaction?

A. Yes, sir.

Hosted by Google

The Presiding Officer—Have the counsel for the respondent any questions to put to the witness?

Mr. McGowan—No questions.

TESTIMONY OF ADDISON MERRILL.

Addison Merrill, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Grosvenor:

Question. Where do you live?

Answer. In Laporte, Indiana.

Q. What is your father's name?

A. Carlos Merrill.

Q. What is his business?

A. Keeping hotel.

Q. What hotel does he keep?

A. The Merrill House.

Q. Were you there in March last?

A. Yes, sir.

Q. You were at home then?

A. Yes. sir

Q. Did you ever see that gentleman sitting at the table on the right? [Mr. Edmonds.]

A. Yes, sir.

Q. Which one?

A. The one on that side. [Pointing to Mr. Edmonds.]

Q. Where did you see him first?

A. In the office.

Q. In what office?

A. The Merrill House office.

Q. Did you have any talk with him there?

A. No, sir.

Q. Did you do anything for him?

A. Yes, sir.

Q. What was it?

A. Folded papers.

Hosted by Google

Q. What papers? [Paper shown witness.]

A. Some of that kind of papers.

Q. Did you ever see one like that before?

A. Yes, sir.

Q. You helped him fold them?

A. Yes, sir.

Q. How fold them? Fold them up?

A. Yes, sir.

Q. And put them into wrappers?

A. Yes, sir.

Q. What kind of wrappers? Were they Government envelopes, Government wrappers?

[The witness made no response to this question.]

Q. Just tell us what you did there; what you did for him?

A. I folded papers for him, and afterwards I carried them; I helped him put them into a basket and carry them down to the postoffice.

Q. How many did you fold?

A. I don't know how many I folded alone; me and him folded together two basketsful,—bushel basketsful.

Q. Two bushel basketsful?

A. Yes, sir.

Q. Were they addressed on the back? Were these envelopes addressed?—any names written upon them?

A. Yes, sir.

Q. What did you do with them?

A. Put them in the money safe after we took them down to the postoffice.

Q. Delivered them to the postoffice?

A. Yes, sir.

Q. Who was over there and received them?

A. That man over there [Mr. Frazer] received one basketful.

Q. Do you know what his name is?

A. Yes, sir.

Q. What is his name,—Mr. Frazer?

A. Yes.

Hosted by Google

Q. How came you to assist him?

A. The clerk, he sent a boy in there to tell me,—to our room.

Q. Did you make any bargain with this gentleman about what he should pay you?

A. No, sir.

Q. Or whether he should pay you anything?

A. No, sir.

Q. Did he promise to pay you anything?

A. No, sir; he did not.

Q. Did he pay you anything?

A. Yes, sir.

Q. How much did he pay you?

A. Fifty cents.

Q. Did he pay you that before you began or after the work was finished?

A. No, sir; after it was finished.

Q. Are you sure they were papers like that you hold in your hand?

A. Yes, sir.

Q. Just such papers?

A. Yes, sir.

Q. What do you see about it that makes you think so?

A. I see them pictures to it. I know these are the ones.

Q. You think that is the one? How long were you engaged putting up those papers?

A. Two hours—about two.

Q. Who helped you?

A. He did.

Q. Anybody else?

A. No, sir.

Q. What makes you think that is the man?

A. He only had one arm.

Q. Well, is there anything else about him that makes you remember him?—any doubt about this being the man?

A. Yes, sir.

Hosted by Google

Q. Have you any doubt about his being the man whom you helped put the papers up? Do you know that he is the man?

A. Yes, sir.

Q. Sure of it?

A. Yes, sir.

Q. Now, can you tell us when, about the time of the month that was? Do you know the date,—what time in March?

A. I have forgot.

Q. Was he ever there but one time that you know?

A. Only there one time that I know.

Q. And this was the time that you referred to?

A. Yes, sir.

Q. Can you tell us anything more definite about the time? About how long ago it was?

A. I cannot tell.

Q. Do you remember whether it was in March?

A. No, sir; I don't.

Q. Don't remember the month.

Mr. Manager Grosvenor—That is all.

Mr. McGowan—That is all.

TESTIMONY OF G. J. FRAZER.

G. J. Frazer, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Grosvenor:

Question—Mr. Frazer, where do you reside?

Answer—At Laporte, Indiana.

Q. What is your business, and occupation?

A. Assistant Postmaster.

Q. At that place?

A. Yes, sir.

Q. Were you there in March last?

A. I was, sir.

Q. During that time, in the month of March, did you ever see the gentleman sitting at that table, called Mr. Edmonds?

Hosted by Google

A. I have every reason to believe, sir, that I saw that gentleman.

Q. Have you any doubt about it?

A. I have no doubt.

Q. Under what circumstances did you see him first?

A. I saw him but once, for a moment, when assisted by this boy by the name of Merrill—

Q. [Interrupting.] The boy that has just left the stand?

A. Yes, sir. He came to the office and mailed those papers.

Q. What papers?

A. Came to the office and handed me a large basketful of papers, which were these.

Q. That paper? [Paper shown witness.]

A. Yes, sir.

Q. Who was present?

A. In the office?

Q. Yes, sir.

A. The postmaster and another clerk were in the office at the time.

Q. Who received the papers?

A. I received the papers, one basketful.

Q. Were there any other papers deposited of the same kind by him?

A. There were two basketsful deposited; yes, sir.

Q. At the same time?

A. Within a few minutes of each other.

Q. Was the respondent present at both times?

A. I cannot say, sir. I saw him but once.

Q. Do you know how those papers were addressed, and how they were done up?

A. The papers were done up in Government wrappers, stamped wrappers; the words "Lansing, Michigan," were printed on a great number of the wrappers; "House of Representatives" and the "Senate," I think,—"The House of Representatives" I am sure was printed also on a number of

Hosted by Google

the wrappers. The person's address was written above that, I think, in pencil.

Q. Do you recollect whether they were addressed to any other persons than the House of Representatives and Senate?

A. Yes, sir. A great number of them were addressed to parties residing at Lansing. That was the address, "Lansing, Michigan."

Q. Of all the papers?

A. I could not say as to all of them. All that I noticed were coming to the State of Michigan; not all of them to Lansing, I think.

Q. Do you remember the other places in the State besides Lansing?

A. I do not.

Q. Then they were addressed to persons residing in different parts of the State than Lansing?

A. I recollect of seeing that there was some other names, but all I noticed "The State of Michigan" was on the wrapper, although I am positive that they were not all coming to Lansing.

Q. What became of those papers? What did you do with them?

A. We forwarded them to the Department at Washington.

Q. Why?

A. In accordance with the postoffice regulations. We first made a statement of the facts to the Special Agent,—the postmaster did,—to the Special Agent of our district, and received instructions from him to that effect.

Q. Then you did not mail them in accordance with the address?

A. We did not; no, sir.

Q. Did you know the contents of those wrappers?

A. At what time?

Q. At the time they were mailed, or afterwards.

A. I did not at the time they were mailed; I did afterwards.

Hosted by Google

Q. How did you come to discover that?

A. Simply by our attention being directed by so many papers being mailed by a stranger, and the general appearance, perhaps, of the papers—the words "Lansing, Michigan," printed on the wrappers; and making up the mail one of them slipped out of the wrapper. I looked at it and its peculiar appearance, and the attention of the Postmaster was called to it, who considered it his duty to refer it to the Special Agent, supposing that it came under the postal regulations as a publication that should be suppressed.

Q. For what reason?

Mr. McGowan—One moment. It would certainly be objectionable to give the reasons of the postmaster, or the opinions of the postmaster.

The Presiding Officer—The Chair is of opinion that the question should not be answered. I will take the vote of the Senate upon it if it is desired.

[The question put by the Manager was withdrawn.]

Q. Do you know of your own knowledge the reason why they were not sent?

A. The reason why they were not forwarded?

Q. Why they were not forwarded as directed and mailed?

A. I can only say that I know that it was the opinion of the Postmaster.

Mr. McGowan—That was the very question ruled upon, as I understand the President.

Q. What was your opinion upon inspection?

A. My opinion was the same.

Q. What was your opinion?

Mr. McGowan—That is objected to upon the same ground.

The Presiding Officer—The objection is sustained. I will take the vote of the Senate if required.

Q. Will you look at that paper before you, and examine it particularly, and then state whether they were like that paper —those that were mailed?

A. [Looking at paper.] Yes, sir, they were.

Hosted by Google

Q. Will you state whether those papers were deposited there by the respondent—were placed there in the usual way of mailing matter?

A. In the one sense they were, sir,—the usual way in mailing such a quantity, for they could not have been gotten into the letter box, the usual receptacle for anything of that kind; and the only parallel case that I know of is where our city papers are mailed. They are brought in baskets to mail in the same way.

Q. Received through—

A. (Interrupting) Received through the money-order window, at the money-order desk.

Q. These were received in that way?

A. Yes, sir.

Q. (By Mr. Manager Cochrane) You have no doubt but what they were brought there for the purpose of delivery,—no reason to doubt it?

A. No reason, sir.

The Presiding Officer—Do the counsel for the respondent desire to ask any questions?

Mr. McGowan—We have no questions to ask, sir.

TESTIMONY OF T. H. BRINGHURST.

T. H. Bringhurst, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Grosvenor:

Mr. Manager Grosvenor—Before examining this witness, I want to recall the last witness for one question.

The Presiding Officer—Ask the question, and let him answer it from his seat.

Q. Where did you see Mr. Edmonds next after you saw him at Laporte, at the postoffice?

A. At Jonesville, in this State.

Q. When?

A. Monday afternoon, this last Monday.

Hosted by Google

Q. On the cars?

A. No, sir; at the depot.

Q. Was he pointed out, or did you recognize him as the man?

A. I recognized him.

Q. Was he pointed out by any one to you?

A. No, sir.

[Mr. Manager Grosvenor then proceeded to examine the witness T. H. Bringhurst.]

Question—Where do you reside?

Answer—Logansport, Indiana.

Q. What is your business and occupation?

A. Special Agent Postoffice Department.

Q. Do you know the respondent in this case, Charles A. Edmonds?

A. Slightly; yes, sir.

Q. When did you see him first?

A. I saw him about the— some time about the middle of March last.

Q. Where?

A. At this place.

Q. Under what circumstances?

A. I had been notified by the postmaster at Laporte of the mailing by a stranger of several hundred papers in contravention of a law of the postoffice forbidding mailing of papers of a certain character, and asking for instructions about them. I directed him to send the papers as the regulations required to the Third Assistant Postmaster General, and to send me a description of the party mailing them, and a copy of the names upon the hotel registers that day. I received his reply, containing a description of the party, and wrote to Lansing to know who that fitted, because on examination of the paper I became satisfied that it came from a person here.

Mr. McGowan—We object to the witness's giving any

Hosted by Google

opinion with regard to the paper. The paper is here. The facts, I suppose, are all the Senators desire.

By the Witness—I wrote then to Lansing to get information as to who that description fitted. Before I received a reply I saw a gentleman from Lansing, to whom I made the application, and on information I received from him I came to Lansing, and called for Mr. Edmonds, at his office; I told him my business, showed him the law, and notified him he would be obliged to answer for the offense at the United States District Court of Indiana, and that I should require him to go to Indiana and file a bond for his appearance at the May term of the court; the Commissioner here, I found, had no jurisdiction, being out of the District. Mr. Edmonds said he would go with me. I told him he could go voluntarily, or I would go to the trouble of getting a warrant and arresting him, but I preferred leaving it with him,—he was a man of public business, and he might suit his own convenience as to the time and manner. He went with me down to Fort Wayne and left a money deposit there with the Commissioner to appear on my notice, after I had reported the case to the Postmaster General, at Washington. There was a legal friend of his met him at Jonesville, who suggested to me, on the way down, some ideas that suggested to me that a jury might not exactly regard those papers as I had done, and that I should not unnecessarily create a confusion and trouble that might be pronounced unnecessary by a jury after all.

Q. Do you recognize that gentleman here?

A. Oh! yes, sir; there is no doubt about it.

Q. Which one is it?

A. Mr. Edmonds.

Q. Who was the legal friend?

A. I think it was this gentleman here [indicating one of the counsel for the respondent]; I think it is him; I am not exactly certain about it; it was a party met us at Jonesville; he was telegraphed at Coldwater; I am not certain about the

Hosted by Google

gentleman. At Fort Wayne we found a Commissioner; I did not know that there was one there; I started to go to Indianapolis with Mr. Edmonds.

Mr. McGowan—I suppose the Managers care nothing for any further description of this. It is outside of the case now, any further history of this matter of the officer.

Mr. Manager Grosvenor—He stated, I believe, that he—Edmonds—left a money deposit for his appearance at the court.

By the Witness—On my requisition, on my call, after I submitted my report to the Postmaster General and got his instructions.

Q. You were acting under instructions, were you, then?

A. Oh, no! Not then I was not, except general instructions. My instructions are, of course, to prevent a depredation upon the mails or to arrest parties committing offenses in this case. In this case I had some little doubts about the results, and I chose to be exactly right, and therefore took that course,—that I would make the report to the Department and await its decision, meantime securing his appearance by the bond, by the deposit with the Commissioner.

Q. You stated that to be about the middle of March?

A. I am not positive about it. I received Mr. Frazer's letter from Laporte on the 11th or 12th of March, and there was some few days intervened before I got time to attend to it; it might have been beyond that time.

Cross-examined by Mr. Shipman:

Q. Which one of the gentlemen here do you recognize as the person you saw on the train?

A. The person that met us at Jonesville?

Q. Yes, sir.

A. I have said I would not be positive of either.

Q. Do you think it was me, sir?

A. Well, I am not certain about that; I would not be positive.

Hosted by Google

Q. I would like to know about it, whether you are positive about the matter, whether it was me or not?

A. Well, I would not undertake to say now, because I want to be exact, and I would not like to say.

Q. Was it the gentleman who sits on my right? [Mr. McGowan.]

A. My impressions were it was him; but, as I said before,—and I repeat now,—I am not certain who.

Q. It was not both of us, was it?

A. No, sir. Mr. Edmonds, on the day I had the interview with him, acted very gentlemanly, agreed to go with me on that night, that evening,—or to give me his decision at five o'clock, whether he would go, or not. At five o'clock he told me that he had telegraphed to a friend at Coldwater who was a banker and an attorney, to meet him at Jonesville, and go with him, if it was necessary, to get the bail.

Q. I was only asking as to your recollection.

A. Well; I can tell you exactly how you can find out the name.

Q. How? if you can.

A. He is a banker and a lawyer and an editor.

Q. I am not a banker nor an editor.

A. I was looking at him more particularly at that time than the friend that met us.

Q. Should you say that either one of us was the person that you met on the train?

A. Well, no. I do not choose to say that it was either of you. I know that he was on the train, though; I recollect that.

Q. He was a person who looked a little like us—the person that met you there, I admit, but he was neither of us. I want to ask you one more question. That is, whether you have given any notice to Mr. Edmonds to appear?

A. I have never received an order from the party.

Q. Simply to be notified that he was to come down?

Hosted by Google

A. Yes, sir. The money lays there with the Commissioner

Re-examined by Mr. Manager Grosvenor:

Q. Was it expected that you would need him before the session of the grand jury, in May? What was there about that?

A. I don't know what the expectation was about that. The grand jury meets in May.

Q. What was said about that between you and him?

A. Well, he told me that it should be settled before the grand jury met, in May. My proposition was to him—my suggestion was to him that he did not desire any trouble about the matter; that he might waive an examination and give a bond, or wait the action of the grand jury, and this proceeding was taken at Fort Wayne, with that in view, and also with the view, at the suggestion of his attorney, to avoid making the matter a record in the court just then.

Re-cross-examined by Mr. Shipman.

Q. No proceedings were had in court, as I understand?

A. Nothing. It was all an informal matter between the Commissioner and myself.

On motion of Senator Jenks the Senate, sitting as a Court of Impeachment, took a recess until 2 o'clock.

Thursday, 2 o'clock P. M., May 2, 1872.

The Sergeant-at-Arms made the usual proclamation, the Secretary called the roll, and the President *pro tem.* announced a quorum present.

The Presiding Officer—The Manager, on the part of the House of Representatives will proceed. The Senators will give their attention.

Senator Wheeler—Mr. President, I move to strike out the word "depending" in rule 21, and insert the word "pending." I think it is a misprint, at least it sounds rather awkward when the oath is administered by the Secretary.

Hosted by Google

The Presiding Officer—The Senator will reduce the motion to writing and pass it to the Secretary.

Senator Romeyn—Will the motion be decided without debate?

The Presiding Officer—I suppose the Senator can raise the question if he desires. The Secretary will read the amendment of the gentleman from the Twenty-seventh.

The Secretary read the amendment.

The Presiding Officer—The question is upon the adoption of the amendment. Are you ready for the question? Those in favor of the adoption of the amendment proposed by the Senator from the Twenty-seventh, will say Aye; opposed, No.

Senator Romeyn—I ask for an explanation. I ask for the criticism on it.

Senator Wheeler—I supposed when I made the motion, that it was a misprint, and I now think so. The word "depending" means depending upon something, leaning upon something for support. I never saw the word used in any form in courts, either civil or criminal.

Senator Ball—I would like to ask how the oath is in the impeachment proceedings against the President of the United States.

The Presiding Officer—It is "depending." The question is upon the resolution of the Senator from the Twenty-seventh. Those in favor of the resolution, as their names are called, will say, Aye; those opposed, No. The Secretary will call the roll.

The Secretary proceeded to call the roll.

Senator Briggs—I will not ask to be excused from voting, but I do not understand the question.

The Presiding Officer—The resolution is to strike out of rule 21 the word "depending" and insert "pending;" it is in the oath administered to the witness,—rule 21.

Senator Wood—I vote aye.

Senator Briggs—Aye.

Senator Wood—I move that Senator Gay be excused from voting;

Hosted by Google

Which motion prevailed.

The Secretary announced, yeas, 15; nays, 9.

The Presiding Officer—A majority of the Senators having voted in favor of the amendment, the amendment is made.

Senator Romeyn—Senator Gay wished me to ask leave of absence for him for the afternoon, he being quite ill at his room.

The Presiding Officer—The Senators in favor of excusing Senator Gay for the afternoon will vote Aye; those opposed, No.

The vote was taken and the Senator excused.

The Presiding Officer—Are the Managers on the part of the House ready to proceed with their evidence in support of the articles of impeachment.

Mr. Grosvenor—We are.

The Presiding Officer—The Managers will proceed.

Senator Romeyn—I ask that the Secretary announce the names of the witnesses as they are called.

The Presiding Officer—The Secretary will announce the names of witnesses.

Mr. Manager Grosvenor—In regard to this witness we shall not be able to exhaust him, on the stipulation I have made with the counsel for the respondent. His testimony will relate to several of the articles which we desire his testimony upon. We will only confine his testimony to the same articles that we gave testimony on this morning. So we may have to call him again.

TESTIMONY OF ORRIN B. QUIGLEY.

Orrin B. Quigley, a witness, produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Grosvenor:

Question. What is your name?

Answer. Orrin B. Quigley.

Q. Where do you reside?

A. I reside in Coldwater.

Hosted by Google

Q. What is your business or occupation?

A. I am in the lightning-rod business.

Q. Are you acquainted with the respondent in this case, Charles A. Edmonds?

A. Yes sir.

Q. How long have you known him?

A. In the neighborhood of a couple of years I have been personally acquainted with him.

Q. Have you ever seen this paper called "Every Wednesday Night?"

A. Yes sir, I have.

[Mr. Manager Grosvenor here exhibited to the witness a copy of the paper above referred to.]

Q. That, or one like it?

A. One similar to this, I should judge.

Q. Have you ever read it?

A. I don't know that I have ever read it. I have heard a small portion of it read.

Q. When and where did you first see a copy of that?

A. I saw it at the Lansing House.

Q. When?

A. I can't tell the exact day,—the time I saw it. It perhaps might be a month ago. I didn't pay any attention to the date. It was two, three, or four weeks ago, perhaps, when I first saw it.

Q. Do you remember whether the Legislature was in session?

A. They were in session at the time.

Q. Do you remember whether it was at the commencement of the session or at the close?

A. At the commencement of the session.

Q. Who had the paper?

A. Mr. Hudson—Mr. Hudson's son—Lett Hudson, I think.

Q. State the circumstances under which you saw it.

A. I was in the hotel, in the saloon, talking with a gentleman that keeps a clothing store over here. We were talking,

Hosted by Google

and Mr. Edmonds came in and shook hands with me, and passed up to Mr. Hudson, and when I looked up, Mr. Hudson had this paper in his hands, and the gentleman I was talking with asked if I had seen the paper. I said I hadn't. He asked me to look at it. I said I didn't know what it was. Said I would look at it.

Mr. Shipman—I hope the witness will confine himself to the conversation in the presence of Mr. Edmonds.

The Presiding Officer—The witness will confine himself to the conversation that occurred in the presence of Mr. Edmonds.

A. I don't remember whether Mr. Edmonds was present during the whole of this conversation or not. He passed through. Directly my attention was called to it, and in reading it I remembered something that Mr. Edmonds had told me some time previous to that.

Q. What was that?

A. Something with regard to a letter he got of a woman in town here.

Q. What was her name?

A. They call her Alice, I believe.

Q. Was there anything in that that reminded you of the conversation with Mr. Edmonds.

A. Yes, sir. That is why I spoke of the paper at the time. I said that I presumed I knew who got it up, for the same thing was in the paper that he had spoken to me about in those letters.

Q. Do you refer to Mr. Edmonds in that.

A. Yes, sir.

Q. When did he say anything to you about what was in that paper? When did Mr. Edmonds say anything to you about it? You said he had had a conversation with you before.

A. About what was in this paper? He never talked about it.

Q. About the letters?

Hosted by Google

A. Oh! it was perhaps about three months ago, I should think.

Q. What did he say?

A. I saw him at Coldwater. I met him there. He asked me how long since I had been to Lansing. I told him not in some time. I asked what was the news. He asked if I had read the last sensation. I told him, no. I asked him what it was. He told me what he had heard down there.

Q. Down there?

A. Yes, sir. We had a long conversation about it. I cannot remember the conversation.

Q. What was it?

A. The substance was that he had got the letters, and that she had been well paid for them.

Q. He had got them from her?

A. Yes, sir.

Q. Did he read them to you?

A. No, sir.

Q. Did he repeat to you the substance?

A. Yes, sir.

Q. State whether the same was contained in this paper.

A. I don't know whether it is all contained in that paper.

By Mr. Shipman—We would much prefer the witness would state what was said instead of taking his opinion.

The Presiding Officer—The witness will confine himself to what was said in that conversation as near as possible.

Q. State what was said to you was in those letters.

A. I don't know that I can state all he said was in those letters; but he went to state that what was in the letters—that Mr. E. H. Porter had written to this woman to go to Detroit with him, and many things that I cannot relate here—a good many things in the conversation.

Q. We want all that you can remember.

A. It is a long time ago to remember such—

Q. The language if you can give it, if not give the substance of what was in those letters.

Hosted by Google

A. I don't know as I would undertake to tell, it was so long ago. In regard to the substance of those letters—the substance was he had got a letter and it was stated that Mr. E. H. Porter had written the letter to her.

Q. Who?

A. Alice; and that he wished her to go to Detroit or Jackson. He was in the boot and shoe business. She would know him by her passing their yard there, and they would be playing croquet. There was a good many things I could not mention.

Q. Was there anything said about going to Philadelphia that called your attention to that, or a letter written from Philadelphia to her?

A. Yes, sir.

Q. What about that?

A. That there was a letter written,—that one of the letters was written from Philadelphia, or going to Philadelphia, I can't tell, really, entirely about that; but the substance was that he had got the letter.

Q. Did he say to you what he intended to do with the letters?

A. I don't just remember now whether he said he was going to publish them or what he said he was going to do with them. I would not be positive in regard to that.

Q. Didn't you have a conversation about it and give him some advice?

A. I think I did advise him not to publish them, as Mr. Porter was respected in Lansing and had a respectable family.

Q. Why did you advise him not to publish if he did not say anything about publishing them?

By Mr. Shipman—I object.

The Presiding Officer—The objection is sustained. We do not want his reason, we want what he did.

Q. Do you remember whether he had proposed to publish them?

A. I think I asked him what he was going to do with the letters? I will not be positive whether he said he was going to

Hosted by Google

publish the letters, or whether he was going to get up a paper, or what he was going to do. I would not be positive as to the answer. It is a good while ago to remember the conversation entire.

Q. But it was one or the other?

A. I think it was one or the other, but I would not be positive which it was.

Q. What reply did he make to you when you advised him not to publish?

A. I don't remember the reply.

Q. Did he say anything about having a likeness of this Alice or of Mr. Porter.

A. I think he said he had Porter's likeness, but I don't remember that he said he had her likeness.

Q. Did he say when he got Porter's likeness?

A. I would not say positive whether he said he had it or whether he said he got it of her, or when he got it.

Q. What is your best recollection?

A. My best recollection is that he was going to get her to get it, or that he had got it of her,—one or the other.

Q. You state he said it would cost something to get the letters. State what he said he paid for the letters?

A. I don't remember the amount, but he said she had got well paid for them.

Q. How long was this conversation before you saw the paper at the Lansing House?

A. It must have been two or three months,—two months at least.

Q. Did you have any other conversation with him on the subject, afterwards?

A. Not on that subject.

Q. In that conversation at Coldwater, did Mr. Edmonds say anything about how the letters were signed—what names, whether signed by Porter's name, or Gray's name?

A. I think it was Gray's name.

Mr. Manager Huston—That is all.

Hosted by Google

The Presiding Officer—Have the counsel for the respondent any questions to ask?

Mr. McGowan—I understand this witness is to be recalled.

Mr. Manager Grosvenor—Yes, on another branch of the case.

Cross-examined by Mr. McGowan:

Q. How long have you resided in Coldwater?

A. I went to Coldwater the 29th day of June, 1859. I called it my home. I have not been there much for the last two years.

Q. In 1859?

A. In 1859, I think about the last of June.

Mr. McGowan—That is all.

The Presiding Officer—The Managers will call their next witness.

James H. Baker, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Grosvenor:

Question. Mr. Baker, where do you reside?

Answer. I reside in Lansing.

Q. How long have you resided here?

A. Nearly twenty-three years.

Q. Are you acquainted with the respondent, Mr. Edmonds?

A. Slightly; yes, sir.

Q. Look upon that slip and see if you have seen it before. [showing the witness a paper.]

A. I have; yes, sir.

Q. When and where?

A. I think it was on or about the 15th.

The Presiding Officer—The witness will speak a little louder.

Witness—About the 15th or 16th of March, I cut it from the hotel-register at Laporte, Indiana.

Q. What hotel?

A. The Merrill House.

Hosted by Google

Q. The same paper?

A. Yes, sir, it is. It has been in my possession a portion of the time since.

Mr. Manager Grosvenor—We offer this as a bit of evidence in the trial,—as testimony in the case.

[The following is a copy of the paper offered by Mr. Grosvenor: "M. W. Akerly, Vincennes, Ind. Alex. Haynes, Menominee."]

Q. Do you know anything about this paper before you, called "Every Wednesday Night"?

A. Not but a very little of my own knowledge. I have had it in my possession.

Q. When did you first see it?

A. It was put in my hands by Mr. E. H. Porter of this city.

Q. Did you ever have that paper? Look at it, and see if your name is on it.

A. Yes, sir. I have a mark on it.

Q. When did you obtain it?

A. I obtained that paper from Mr. J. H. Bringhurst, at Logansport, Indiana.

Q. The gentleman that has been on the stand as a witness?

A. Yes, sir; the Special Agent of the Postoffice Department.

Q. Have you any knowledge as to the authorship of that paper?

A. I have no personal knowledge.

Mr. Manager Grosvenor—That is all.

Mr. McGowan—Will he be recalled?

Mr. Manager Grosvenor—I do not know whether we shall want to recall him upon this matter.

Mr. McGowan—Upon any matter?

Mr. Manager Grosvenor—I do not know that we shall at present.

Mr. Shipman—We have no questions.

Hosted by Google

Mr. Manager Grosvenor—We want to ask Mr. Bringhurst another question.

T. H. Bringhurst recalled. Examined by Mr. Manager Grosvenor:

Question. Will you look upon that paper before you, entitled "Every Wednesday Night?" Did you give to Mr. Baker that paper?

Answer. I don't know, certain.

Q. Did you deliver him a paper?

A. I delivered him a copy of this edition.

Q. Where, and when?

A. At Logansport.

Q. Where did you receive it?

A. I received my copy from Mr. Frazer, the postmaster at Laporte, and I received other copies from Washington. I had them returned to me, at my request, from the Third Assistant. The one I gave Mr. Baker came from Washington.

Q. Did you receive that from Mr. Frazer, the postmaster?

A. That was the first I received; I cannot speak of this identical paper.

Q. But another of this edition?

A. Yes, sir; the same edition.

Mr. Manager Grosvenor—That is all.

Mr. Shipman—No questions.

Mr. Manager Grosvenor—I would like to ask Mr. Frazer one question right where you are. Mr. Frazer, did you deliver a copy of that paper to Mr. Bringhurst?

Mr. Frazer—My brother, the postmaster, sent a copy to him.

Mr. Manager Grosvenor—Did you know where he obtained it?

Mr. Frazer—It was one that was mailed in New York.

Mr. Manager Huston—One from Mr. Edmonds out of this same lot?

Mr. Frazer—Yes, sir.

Mr. Manager Grosvenor—I propose to call one witness more, in order to have this testimony together, so it will be consecu-

Hosted by Google

tive, and I will call Mr. Lewis, the postmaster; that was not in the stipulation this morning.

TESTIMONY OF SETH LEWIS.

Seth Lewis, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Grosvenor:

Question. Mr. Lewis, where do you reside?

Answer. In Marshall, Michigan.

Q. Did you act as postmaster of the Legislature during its extra session?

A. I did.

Q. Look upon that paper before you entitled "Every Wednesday Night," and say whether the paper came to you through the mail addressed to members of the House and Senate.

A. There were, I think, thirty copies of a paper bearing this description that came to the postoffice at the Capital, which I handed out to different persons.

Q. Addressed to them?

A. Addressed to different persons. They were mailed at Toledo, Ohio, in what we call the official size envelope, a letter envelope, and six cents postage paid on each one.

Q. On what kind of an envelope?

A. On official size envelope, a large envelope.

Q. Did they come by due course of mail?

A. I suppose they did; the boy brought them from the postoffice—said he brought them from the postoffice.

Q. The way all mail matter came?

A. The same as the others came.

Q. Did they bear the regular stamp?

A. They were posted, mailed in the Toledo office, and bore the Toledo postoffice mark.

Q. Bearing a canceling mark?

A. Yes, sir.

Hosted by Google

Q. They were addressed to different members of the House and Senate?

A. Yes, sir.

Q. And was the address in writing or in print?

A. The address was in writing.

Q. I did not quite get your idea how they were put up; you say in a government envelope.—in a common envelope, a newspaper envelope?

A. They were sealed in what is called a government envelope.

Q. Sealed close?

A. Sealed as letters.

Q. What time did you receive them?

A. They were received about six o'clock, I think.

Q. Of what day?

A. I don't remember whether the evening of the 20th or 22d. I did not take down any date at the time, but it was the 20th or 21st of March. The letters were post-marked the 19th at Toledo; that was the date of the post-mark.

Q. Can you remember any particular Senator or Member of the House that you delivered one to?

A. I remember positively of delivering one to Mr. Hill, Representative in the House, and Mr. Begole, I think.

Q. Senator Begole?

A. Yes, sir. I don't remember the names of the others; I might guess at it, perhaps.

Q. Now, how do you know that they were the same edition of that? Did you see any open?

A. I saw them open.

Q. Examined them?

A. Yes, sir, examined them. I looked particularly at the pictures. I did not have time to read much else.

Mr. Shipman—That is all.

Mr. Manager Grosvenor—We now offer this paper in evidence.

Hosted by Google

[Paper offered in evidence, entitled "Every Wednesday Night, Vol. 1, No. 1.]

Mr. Manager Grosvenor—I think that will close what we have.

The Presiding Officer—Does the Chair understand that the paper is offered in evidence ?

Mr. Shipman—We object to the paper being introduced in evidence at this moment, under the arrangement made this morning, that these witnesses were to be sworn, and that further proof was to be deferred until after to-morrow morning. Therefore we object to this being received at this time, until we can be heard on this question.

Mr. Manager Grosvenor—If it is only identified, we will leave it with the Clerk. We offer it, and let it remain there.

The Presiding Officer—How is the Chair to understand this, —that this paper is offered in evidence, or simply filed with the Secretary?

Mr. Manager Grosvenor—We offer it in evidence, and he objects to it, and we allow it to remain in that way. If it is objected to, let it remain in that way.

The Presiding Officer—Some disposition should be made of it. It should be received or rejected.

Mr. Manager Grosvenor—It does not seem to me that it it makes any difference whether it is put in now or some other time, but if it is an accommodation, we will withdraw it and have it filed with the Clerk.

TESTIMONY OF E. H. PORTER.

E. H. Porter, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Huston :

Question. Mr. Porter, where do you reside ?

Answer. I reside in Lansing.

Q. How long have you resided in Lansing?

A. Since the fall of 1866.

Hosted by Google

Q. Since the fall of 1866, do I understand you?

A. Yes sir.

Q. Are you acquainted with Mr. Edmonds, the Commissiongr of the Land Office?

A. Yes sir, I am.

Q. How long have you been acquainted with him?

A. I first met him the first time, at the convention, at Detroit. I can't tell when that was.

Q. Where was it?

A. At the convention at Detroit, in 1870.

Q. What convention?

A. The State convention.

Q. What party?

A. By the Republican party.

Q. Can you tell when that was?

A. I believe it was in July; I am not positive,—June or July.

Q. You say that is where you first saw him?

A. Yes, sir.

The Presiding Officer—I hope the witness will speak loud and distinct, so as to be heard in all parts of the Senate chamber.

Q. Did you meet him after that?

A. I have met him since that.

Q. Where?

A At Lansing.

Q. At what time?

A. The first of January, 1871, I think.

Q. The first of January, 1871. What was your business at that time?

A. I was then Deputy Commissioner in the State Land Office.

Q. That is when Mr. Edmonds came there in 1871. Who was Deputy under Mr. Edmonds in the winter of 1871—when did Edmonds' term commence?

A. In 1871, I think.

Hosted by Google

Q. The first of January, 1871?

A. The first of January, 1871.

Q. Who did he make his Deputy?

A. He made me his Deputy.

Q. How long were you Deputy?

A. Until June, 1871.

Q. Five months. What is the character of the business done in the Land Office?

A. It is a general business in care of the State Lands.

Q. State lands. What are the State lands? What are they denominated, that you have charge of in that office?

A. Primary school, State swamp lands, asset lands, University lands, and Agricultural College lands, are the different kinds.

Q. Do you know what is called swamp land scrip?

A. I do.

Q. What is it?

A. Credit, I suppose, to the State.

Q. A credit to the State?

A. A credit to parties taking contracts for building State roads. There is no scrip.

Q. Will you explain just what you mean by scrip, so that the Senate will understand you. Explain what this swamp land scrip is.

A. It is quite a roundabout road to take up the contract and go through with it all.

Q. State briefly.

A. As I said, it is a credit on the part of the State to a contractor for the building of a road,—he receives it in dollars and cents in the books of the office.

Q, It is credited in dollars and cents?

A. Yes, sir.

Q. Is all paid in dollars and cents?

A. It is paid in land.

Q. Paid in swamp lands?

A. Yes, sir.

Hosted by Google

Q. You say it is a credit that the contractor gets for the building of a road; is all the credit that he gets before the road is constructed, or after?

A. After.

A. What is this credit usually called after the road is constructed?

A. Scrip.

Q. Have you not another name for it?

A. Swamp land scrip.

Q. Don't they call it matured scrip?

A. Yes, sir; matured scrip after the road is constructed.

Q. Any other name for any other class?

A. There is unmatured scrip.

Q. What is that?

A. A contract made on the part of the State by parties building roads, whereby parties may come in and select lands and hold them until the road is completed.

Q. Until they complete their contract?

A. Yes, sir.

Q. Suppose they don't complete their contract at all?

A. I suppose then they do not have access to them.

Q. Do they get their patents on them?

A. They do not.

Q. Now, while you were Deputy for the Commissioner, what arrangement did you make with him, if any, in regard to dealing in this Swamp land scrip, with Mr. Edmonds?

A. I made arrangements with him to deal in scrip as we had done before he came into office.

Q. Will you state what you said to him at the time that arrangement was made, and state the manner in which it was made?

A. I do not think I can state positively what day it was.

Q. About the time?

A. Something about the first or second week in January.

Q. What did you say to him about it?

A. I had a conversation with him alone, in which I related

Hosted by Google

to him the matter of the sale of the scrip; told him how we had been in the habit of doing it in all its details; I think fully,—he giving me liberty to go on.

Mr. Shipman—I had rather the witness would state the language used.

The Presiding Officer—State the precise words as near as you can remember.

Mr. Manager Huston—I suppose he may state the substance.

The Presiding Officer—If he cannot remember the words.

Q. State what Mr. Edmonds told you to do.

A. He told me to go on and do just what we had been doing.

Senator Jenks—I would like to know how he had been doing?

Mr. Manager Huston—If the Senator will give us time we will bring it all out.

Q. Will you state now—you might as well now as any other time—what you did tell him had been your custom, or what you were doing. You say you told him what you had been doing, and he told you to go on and do the same. Now, state what you had been in the habit of doing. You have been Deputy before 1871.

A. Yes, sir.

Q. Now, state what had been your practice in Swamp Land scrip before that time.

A. It had been the practice to buy scrip whenever I could buy it.

Mr. McGowan—As I understand it, he has stated what he said to Mr. Edmonds.

Mr. Manager Huston—He has stated what he told Mr. Edmunds was the practice before he was Commissioner. Now, I ask what that practice was?

Mr. McGowan—That will be just what he told Edmonds. I only want to get at the manner of the question.

Q. Go on and state.

A. As near as I can remember, it had been the practice of

Hosted by Google

buying and selling the scrip,—buying it at as low figures of the contractors as we could, and selling it to the purchasers that came into the offiee.

Q. What did you tell him had been your practice in buying lands where parties came to the office, that had not anything but scrip?

A. I told him about the practice of the office, that where money came in we used it the same as when parties came to buy scrip.

Q. Suppose you received one hundred dollars for eighty acres of swamp land, at ten shillings an acre; some one sends you $100 by mail, what do you do with that one hundred dollars?

A. Deposit it to the scrip account and pay scrip for it.

Q. Do you pay the money into the Treasury?

A. No, sir.

Q. What do you pay into the Treasury?

A. Pay scrip.

P. What did you do, when you had occasion of this kind, while you was Deputy for Mr. Edmonds?

A. I do not remember that such a case happened. There might have been. I do not remember of any. If there had been any such a case, I think I would have remembered it. I do not remember of any such case happening, but then there might have been.

Q. You don't remember any particular case?

A. No, sir; I don't. It is something that happens very seldom, anyway,—*very* seldom.

Q. It was very seldom that money came in in that way?

A. It is very seldom that a man sends $100 in that way to buy 80 acres of land. Most men are aware, throughout the State, that they can purchase scrip for swamp lands, but once in a while they send in money in that way, but not often.

Q. What did you do with this money when received?

A. I usually kept an envelope in a private drawer in the safe, and put it in there.

Hosted by Google

Q. At the end of the month what did you do with it?

A. Deposited it, generally. I used what belonged to myself and the avails of it, from the profits of it, as my own.

Q. What did you do with the balance of it while with Mr. Edmonds?

A. I divided one-half of the profits, the first three months I was with Mr. Edmonds.

Q. What was the amount?

A. I cannot state the amount, I have not got the minutes with me; it was somewhere near $100.

Q. Have you any memorandum that you kept at that time?

A. I have in my store, but I have not here with me.

Q. You have got a memorandnm that you kept?

A. Yes, sir.

Mr. Manager Huston—I wish you would go down and get it. Be as expeditious as possible.

The Presiding Officer—Can you not send for it?

Witness—There is no one that will know where to find it but myself.

The Presiding Officer—Be as expeditious as possible. [The witness here retired from the stand, and soon after returned with the memorandum.]

The Presiding Officer—The Managers will proceed.

Mr. Manager Huston—Did you get that memorandum?

A. Yes, sir.

Q. What is the amount you paid over to Mr. Edmonds.

A. Two hundred and eighty-seven dollars in all.

Q. How?

A. Two hundred and eighty-seven dollars in all.

Q. When were these payments made?

A. One hundred and five dollars was paid to him the first of January, or for January rather; one hundred and seven dollars for February; seventy-five dollars for March.

Mr. McGowan—Give the amounts again—one hundred and five dollars in January?

Hosted by Google

A. One hundred and seven for February and seventy-five for March.

Mr. Manager Huston—You furnish the money to buy this scrip?

A. I furnished most of it. I furnished all in February.

Q. How?

A. I furnished it.

Q. You furnished all the money?

A. Yes, sir.

Q. The scrip, then, that you bought while you was Deputy under Mr. Edmonds, you bought with your own money,—the whole of it?

A. No, sir. I cannot say that.

Q. Then how was it? Whose money did you use?

A. I used some money in the safe, belonging in an envelope, of parties that I cannot remember the names of; that had been there for some length of time,—for years. I borrowed it from the envelope whenever I had occasion. When I hadn't money enough of my own, it was borrowed from that envelope.

Q. Now, what was the talk of taking that money, that you had with Edmonds.

A. I gave him full information of the amount there, and he gave me full liberty to use it.

Q. How much was the amount in the safe?

A. I cannot be positive, but I think somewhere from ten to twelve hundred dollars.

Q. How much did you ever use?

A. I did not use, perhaps, not half of it any one time.

Q. You used it and then returned it?

A. Yes, sir.

Q. Now in regard to this scrip, I don't know as I understood you fully about how you managed to take up lands with it. Will you just explain again when a party has ordered lands?

A. The only way I can explain it is, that if a man sends

Hosted by Google

money to the office to purchase scrip, we take the money, and forward scrip to pay for the land with.

Q. State whether there was any occasion after you were in there after the first of January, 1871, while you were in there, in which money was sent for lands, and the money was kept and the lands paid for in scrip?

A. My recollections are that one or two such occasions occurred, but I cannot state when or at what time.

Q. Did n't such occasions occur along occasionally?

A. Yes, sir.

Q. And pursued the same course under Edmonds you had before?

A. Yes, sir, always.

Q. Keeping the money?

A. Yes, sir, that was the invariable practiee.

Q. By the direction of Mr. Edmonds?

A. Yes, sir.

Q. How many times did you use the money in the safe, that is, you did'nt return the same money, but it was used and returned, the same amount?

A. At different times, small amounts; I cannot tell; but not at any one time any amount that I can specify. I don't know. If I had means of my own I used them to purchase the scrip. If I happened to fall short in the purchase of them, I borrowed it from those envelopes, and as soon as it was sold returned it.

Q. How were those envelopes marked? Were they marked to whom they belonged?

A. Yes, sir, every one of them.

Q. Tell us how there came to be that amount of money in the safe?

A. Much of it was there before I went into the office,—had been there for some time,—and the other was payment for interest or taxes or something where men could not be found. It had been left there. No one had called for it, and we could not find where it belonged. It had been continued from one

Hosted by Google

Commissioner to another for a number of years, and receipts being given always.

Q. Is n't it your practice, if any one sends money there to pay taxes, or interest, if they send more than the amount required, to return the balance?

A. Yes, sir, always done when it can be done.

P. That is the rule?

A. Yes, sir.

Q. You say you divided the profits of the scrip speculation for three months, and you was in the office five months?

A. Yes, sir.

Q. What became of the profits the last two months?

A. I kept it to myself.

Q. So that the profits of these two months are not included in the amount you have stated here?

A. No, sir.

Q. Will you state whether Mr. Edmonds commenced a suit against you?

A. He did.

Mr. Shipman—One moment. I do not know what the object of this testimony is now, and until there shall be some explanation we shall object to it, as the record would be the better evidence of what was claimed in that case; still we do not wish to seem technical.

Mr. Manager Huston—We simply desire to show that Mr. Edmonds claimed a half interest in the speculation, and commenced a suit in the circuit court of this county.

Mr. Shipman—We will waive the objection, if that is the object.

A. I suppose that is what it is for. He so stated.

Q. Mr. Edmonds so stated to you?

A. Yes, sir. He said he should commence a suit against me.

Q. Well, did he? Were there any papers served upon you?

A. Yes, sir.

Q. Has the case been brought to trial?

A. No, sir.

Hosted by Google

The Presiding Officer—The Managers will proceed as rapidly as possible.

Mr. Manager Grosvenor—The testimony of this witness is so mixed up with other articles that we are forbidden to offer, that it is a little difficult to get at the testimony.

Q. In regard to this scrip trade, will you state whether the Commissioner had any local agents in any of the northern counties?

A. I do not know of any, sir.

Q. Who were furnished scrip?

A. Not that I am aware of.

Q. Are you acquainted with N. J. Wilder of Tuscola county?

A. Yes, sir.

Q. Were you in the habit of selling scrip to him?

A. Yes, sir.

Q. Isn't it a fact that in most of the northern counties the business has been so arranged that there are local agents, who are acting for the purpose of selling lands that get their scrip directly from the office of the Commissioner?

A. I suppose they call themselves agents.

Q. Don't they advertise, and claim to act as agents of the State?

A. I believe Mr. Wilder does.

Q. Well, isn't that the fact in other counties?

A. I presume so, sir. I am not positive, however, as to that. I am not positive.

Mr. Shipman—What Commissioner is that—do you refer to Mr. Edmonds?

Mr. Manager Huston—Yes sir.

Q. Mr. Wilder claimed to be acting as the agent for the sale of swamp lands, while Mr. Edmonds was Commissioner?

A. Mr. Wilder often sent to me, as Deputy Commissioner of the office, to purchase lands for parties; that is, he acted for them.

Hosted by Google

Q. And who furnished him his scrip?

A. I have, I think, from that time to this.

Q. Now, what was scrip worth on the first of January, 1871?

A. It varied in price somewhat.

Q. Well, as near as you can remember, what was it worth?

A. Perbaps at that time it was bought at about seventy-five cents; that would be my recollection.

Q. Worth about how much?

A. I think about seventy-five cents on the dollar.

Q. At the time you entered into this arrangement with Mr. Edmonds, and made the explanation you made to him, did you call his attention to the law in regard to what should be done with the money that was received for swamd lands?

A. Well, sir, I think we looked the law over fully in regard to the sale and purchase of swamp lands; that is my recollection.

Q. You think you looked it over fully?

A. Yes, sir. I don't know whether I called his attention to it fully. I don't remember. I know the law was looked at, at different times, in regard to the sale and purchase of swamp land and scrip.

Q. You think it was fully understood at the time this arrangement was made?

A. Yes, sir, I am quite sure it was.

Q. Now I want to call your attention to the law passed in 1869,—the graduation act,—and have you state when the public sale was under that act, if you remember.

A. Well, without reference to the books, I can only say that it was in the fall. I think in November, 1869.

Q. In the fall of 1869?

A. I think so. Yes sir.

Q. Well, sir, can you state what the price of swamp land was per acre at the time you were in the office?

A. Ten shillings. I mean at the time of the sale of swamp land, we sold for ten shillings an acre.

Q. Yes. But under the graduation act how was it?

Hosted by Google

A. As graduated, they were put in market at six dollars an acre, and graduated every six months. The first six months graduated at four dollars; the next six months at two, I think.

Q. Well, did they graduate any lower than that?

A. No, sir, not those lands that were offered.

Q. Those lands, then, remained at two dollars?

A. Yes, sir.

Q. I want to ask you whether there was any land at the time you left the office, the first of June, that the minimum was higher than ten shillings or two dollars. These swamp lands, I mean?

A. Yes, I know what you mean. My recollections are that these lands were selling at four dollars an acre. I don't remember whether they graduated to two,—those, or not.

Q. You don't recollect, then?

A. I don't remember without referring to the books.

Q. Do you know a man by the name of Bush, at Saginaw City?

A. Yes, sir.

Q. Do you know about his having any transactions with the office in lands, in the year 1871, while you was Deputy Commissioner?

A. He was often in the office looking up and caring for lands that he had been looking up for other parties, and some for himself.

Q. How?

A. I think he had some lands selected for himself, and for other parties. He was often in the office.

Q. Do you know anything about his looking up lands for Mr. Barnard?

A. I am not aware that he looked a foot for him, personally.

Q. Personally?

A. Personally, I am not aware that he looked a foot of land for him.

Q. How are you aware of it?

A. Only from hearsay.

Hosted by Google

Mr. Shipman—One moment. If it is hearsay, we object to it.

The Presiding Officer—The witness will state his own personal knowledge.

Witness.—I don't know, sir.

Q. Have you any knowledge of Mr. Barnard's having lands marked as reserved, in different parties' names, that he was interested in, in the year 1871?

A. I have no such knowledge.

Q. You have no such knowledge?

A. No, sir.

Q. And no knowledge of his furnishing plats to Mr. Bush, for the purpose of looking up lands?

A. No, sir, I have not.

Mr. Manager Huston—That is all we think of, at present. You can take the witness.

The Presiding Officer—Have the counsel for the respondent any questions?

Mr. McGowan—Yes, sir.

E. H. PORTER RE-EXAMINED.

By Mr. McGowan:

Q. Mr. Porter, what were your duties in the office as Deputy Commissioner?

A. A general supervision of the office.

Q. What fees are received, if any, by the Land Office?

A. For plats, and for field-notes. We do not call these field notes fees,—field-notes of the different counties.

Q. About what would be the value of the fees received for plats and field notes during a month? What would they average?

A. Oh, perhaps a hundred dollars,—perhaps less, and perhaps more—sometimes but very little, and other months more—more or less. I have no idea. I could not say.

Q. Were fees received from these sources by the office previous to Mr. Edmonds' administration?

A. Yes, sir.

Hosted by Google

Q. Who had charge of those fees when they came into the office?

A. They came into my hands.

Q. As Deputy?

A. Yes, sir.

Q. What did you do with them?

A. I kept them until the end of the month and deposited them.

Q. Where did you keep them?

A. Kept them in the Land Office.

Q. Where?

A. I think in the safe, or in the drawer, locked. Sometimes in the safe, and sometimes in the drawer.

Q. Did you make any account of them?

A. No, Sir.

Q. Never did?

A. Never made any account. Never itemizing the amounts. Never gave any items.

Q. Was there any book in which a record was kept of the fees of the office?

A. Never.

Q. Was there any previous to Mr. Edmonds' administration?

A. Never.

Q. Was there any kept after he came into the office.

A. After a certain length of time. I cannot tell when, now.

Q. Who commenced that book?

A. Mr. Edmonds.

Q. Well, who prepared the book? Who made the first entries?

A. I presume I did,—I don't remember. I think I probably did.

Q. By whose direction?

A. By Mr. Edmonds'.

Q. Do you remember that some field-notes were made for Branch county, in the spring after Mr. Edmonds came into office?

A. Yes, sir.

Hosted by Google

Q. Do you remember the amount that the county paid for those notes?

A. I do not, the exact amount,—something over a hundred dollars, I think.

Q. Was it not over a hundred and fifty dollars?

A. I could not state positively the amount; it was over a hundred dollars. I don't know the amount.

Q. Do you know the fact that Mr. Edmonds brought the money back personally, and gave it to you?

A. From Branch County?

Q. Yes, sir.

A. Yes, sir.

Q. When was that?

A. I don't know. I don't remember.

Q. Do you not remember that it was in March?

A. I could not swear, sir, positively, when it was; it might have been.

Q. You think it was over a hundred dollars?

A. I think it was.

Q. You say that the fees from these sources were paid into the Treasury at the end of every month?

A. Yes sir,—no, I said the fees for plats.

Q. The fees for plats?

A. I said the fees for plats.

Q. Don't you include the fees for field-notes, too?

A. I don't call those fees; those are not fees.

Q. Well, the moneys received from that source? we won't be technical about it.

A. I said just as I say now, that the fees for plats were paid in at the end of the month.

Q. What became of the moneys that were received?

A. They were held, sir; those that were handed to me were kept in the safe.

Q. I ask you, generally what became of the money that was received now, from field-notes that were furnished to counties?

Hosted by Google

A. Many of them were never received until the end of the year, and paid in. We had to trust out nearly every county; times they were paid.

Q. It don't make any difference when they were received; what was done with the moneys when they were received?

A. Always went into the Treasury, sir; every dollar of it.

Q. When?

A. I can't tell you when; whenever I saw fit to put it in.

Q. Was it put in regularly, at the end of each month?

A. Whatever there was on hand; not at the end of each month,—it was not usually.

Q. How much money was paid into the Treasury at the end of the month, in which you had received this one hundred dollars from Branch county?

A. I can't tell. I don't know.

Q. No recollection?

A. I can't tell positively the amount. I don't remember.

Q. Don't you recollect that it was less than one hundred dollars?

A. I don't recollect how much it was. It might have been more than that, so far as my recollection is. I don't remember.

Q. Did you keep the fees received from plats, and the fees received from field-notes, separate.

A. Always.

Q. Where did you keep the fees received from plats?

A. Kept them in the drawer, usually?

Q. Where did you keep those received from field-notes?

A. In the safe.

Q. And you say that always the fees received from plats were put into the Treasury.

A. Yes, sir.

Q. That received from field-notes was not?

A. Well, not generally. Sometimes it was put in and sometimes it was not; but not generally,—not at the end of the month.

Hosted by Google

Q. Why wasn't it put in regularly?

A. Well, it was very seldom received.

Q. Was it used for any purpose?

A. No, sir, it was not used for any purpose.

Q. Do you rembmber the fact of having a conversation with the Commissioner in April, after these fees were received from Branch county, concerning them?

A. Yes, sir.

Q. Didn't he then ask you to explain how it came that there was so little money put into the Treasury at the end of March?

A. Yes, sir.

Q. Don't you remember now that he claimed that there was less than a hundred dollars—some eighty odd dollars only—paid in?

A. I don't remember, sir, whether he claimed that or not. He claimed that this had not been paid in.

Q. Don't you recollect that there was less than a hundred dollars paid in at the end of March?

A. I don't recollect what amount was paid in.

Q. What is your best recollection concerning it?

A. Whatever the amount was that was paid in, the record will show. I cannot tell you.

Q. You say there was no record kept?

A. The Treasurer always keeps a record of the amount of money he receives.

Q. But whether the amount that you receive was put in there;—there is no record of that, is there?

A. No, sir.

Q. If you had retained a portion of that plat money, would there be any way to discover it, from the records of the office?

A. I never did.

Q. I ask you the question.

A. No, sir, there would be no record.

Q. There would be no way to discover it, would there?

A. No, sir.

Hosted by Google

Q. Would not that have been true also, if you had retained a portion of the funds received from field notes?

A. No, sir, it would not.

Q. What method would there have been of discovering the amount retained by you, if you had chosen to have retained a portion of that and not paid it into the Treasury?

A. Kept an account with whatever county we did business with. Very many counties did not pay. By the law they were got whenever the board of supervisors—

Q. You kept an account with the county?

A. I kept a private account with each county.

Q. Oh, a private acoount?

A. Yes, sir.

Q. I ask you this, Mr. Porter, whether there was anything in the office by which it could be discovered, on the official record, if you chose to retain a part of the moneys?

A. Nothing on the official record.

Q. You kept no account of the fees received from field-notes?

A. No, sir, never.

Q. As an officer no official account?

A. No, sir.

A. Now, sir, will you state what that conversation was between you and the Commissioner concerning this money received from Branch county, the first of April.

A. I think he asked me why that money was not paid in, or where it was. I told him the money was in the safe. He requested that I should pay it in immediately, into the hands of the Treasurer, and I immediately done so. It lay in the safe all the time.

Q. Did you tell him then that he was rather particular?

A. Perhaps I did. I don't remember whether I did or not.

Q. Did'nt you tell him then that General Pritchard allowed you to keep that money?

A. No, sir, I don't think I did.

Q. Now, sir, didn't you tell him that you thought he under-

Hosted by Google

stood that matter, and that you kept a portion of that money from time to time and used it for the purchase of scrip?

A. Nothing except the money in those envelopes.

Q. I don't mean that you kept it to use for yourself. Didn't you keep it to use for the purpose of buying scrip?

A. I don't know that I ever used a dollar of field-notes moneys for the purchase of scrip. I don't remember that I ever used a dollar of it.

Q. Didn't you borrow it from the field-notes fund to use for that purpose?

A. No, sir. I never borrowed a dollar from that fund to purchase scrip with.

Q. Now, Mr. Porter, you may state about what the average was of the amount paid to the Treasurer per month during the fiscal year 1870.

A. I cannot tell you the amount.

Q. I mean from these sources.

A. You mean from all sources?

Q. No, sir. I mean from the maps, charts, and field-notes.

A. I don't remember, sir, without referring to the books.

Q. Give us your best recollection. Was there a hundred dollars a month, on an average, paid in?

A. More than that average, sir, considerable.

Q. The books will show, do you think, a hundred and fifty?

A. Well, sir, I should rather refresh myself from the record. I can't be sure now.

Q. Was it two hundred and fifty dollars?

A. I can't tell you. I don't know.

Q. Do you think it was as much as that?

A. I think the first year, 1870, was something like eighteen hundred dollars. I am not positive.

Q. I am asking you what the monthly average was, paid into the Treasury, from these sources?

A. Well, it would average a hundred dollars or over.

Q. Now, sir, is it not a fact that at the close of the last

Hosted by Google

month of the fiscal year of 1870, that you paid into the Treasury, from these sources, nearly two thousand dollars in money?

A. Yes, sir. I think so.

Q. Was not that from moneys that you had reserved from field-notes?

A. No, sir. That was from moneys that I worked very hard to collect up from the different counties for making field-notes, that I had trusted,—some of them for over a year.

Q. When was it received?

A. It was received nearly the last of the year. Most all of it nearly the last of the year, at different times.

Q. In this conversation alluded to did you not tell Mr Edmonds that whenever you were short of money for the purchase of scrip, that you had been in the habit of using portions of that money received from field-notes?

A. I don't remember of ever telling him anything in regard to that. I do in regard to the other moneys,—moneys in the envelopes.

Q. What is your best recollection of telling him about that; about using the moneys received from field-notes?

A. I never told him anything about it, I don't think, at all. I don't remember that I did.

Q. Mr. Porter, when you paid in the money at the end of the month, received from plats, why did n't you pay in the one hundred and fifty dollars, received from field-notes, from Branch county.

A. It was left in the safe.

Q. Why did n't you pay it to the Treasurer?

A. Because we had not been in the habit of paying it until a certain amount, perhaps a thousand dollars, had been received for field-notes; it was then paid into the Treasury. There was no specified time to pay it into the Treasury.

Q. Why did you hold it?

A. I can't give you any special reason why.

Q. You had been in the habit of holding it until it was about a thousand dollars?

Hosted by Google

A. Oh, we held it until we got ready to put it in, at different times, sometimes collected it from three or four counties and perhaps then transferred it. There was during the last year, during '69 or '70,—I have almost forgotten the year,—this year that you speak of, where this amount was handed in, the most of it was collected during the last two months of the year from different counties, that had been held over, some of it for over a year.

Q. This money that was held along from time to time, that was paid in for field-notes, do you say that there was no use made of it at all?

A. Not a dollar was used of any money that Mr. Edmonds handed to me from field-notes from Branch county.

Q. I did not ask you that,—that was not the question at all I asked you if there was any use made of this money, which you held from time to time, which you state sometimes accumulated to a thousand dollars, for any purpose?

A. No, sir; never.

Q. Was it just as convenient to pay that money into the Treasury as it was to pay what was received for plats, etc.

A. It could be done.

Q. Why did you pay into the Treasury regularly at the end of each month the money received from plats, and not the money received from field-notes?

A. Well, sir, that was an account for the fees in the office that we returned every month regularly.

Q. What did you allow that money to accumulate for?

A. We never did to any amount, sir, until the last of the year, the close of the year.

Q. Why did you oppose Mr. Edmonds' instruction to pay it over to the Treasury?

A. I did not.

Q. Why did you charge him with being particular, when he wanted it paid over?

Mr. Manager Grosvenor—Wait one moment. I do not understand that the witness has so stated. It is putting a pre-

Hosted by Google

sumption to him that has not been testified about. I understand that very great latitude has been given. We do not propose to be technical at all, but we do not propose to have questions put to witnesses upon a presumption that he has said something that he did not say.

The Presiding Officer—The chair understood the witness to say, in his cross-examination, that he may have told Mr. Edmonds that he was particular about it,—something in regard to that.

Witness—Well, I can't remember the conversation we had together. We had a general conversation there with regard to it.

Mr. Manager Grosvenor—He asks him as though it was a positive thing, Why did you do say so and so? I think that is a violation of the rules.

Mr. McGowan—Perhaps this is outside of the examination in chief, and I have no objection to bringing it fairly within the rule. I will state what I propose to show. We propose to show, as a part of our case, that the present witness, who was then Deputy, as he says, kept back these fees from field-notes and from plats, both without keeping any record of them whatever, and that when the Commissioner found it out he censured him for doing it; that he charged the Commissioner with being particular, and that they had words, and out of that grew an ill-feeling which we propose to show existed between the Commissioner and the Deputy, the present witness, showing the bias of the witness in any statements he may make here before the Court.

Mr. Manager Cochrane—As I understand the witness, his answer to the question was, that he may have told him so, that he may have made the remark to the Commissioner, to which the question had reference. Now, I submit that the proper form of question is, not, "why you told him that," but "if you did tell him so, why did you tell him so?"

Mr. McGowan—I am willing to frame the question in that way.

Hosted by Google

Q. If you stated to Mr. Edmonds that he was too particular, or words to that effect, about that matter, why did you say so to him?

A. I said so in general terms in regard to his ruling, in regard to the general work of the office; in everything that he had done.

Q. Did you consider him too particulor?

A. I thought he was changing things very particularly.

Q. Did n't you tell him, with regard to these moneys, that you kept them along from month to month, or a portion of them, and paid them in at the end of the year?

A. I may have told him that. I don't know whether I did or not. I presume I did. I have no doubt but I did.

Q. Didn't you then take him to the books, and show him how, at the close of the fiscal year 1870, you had paid in about two thousand dollars, showing how these moneys had been kept?

A. I may have done so, but I don't remember it.

Q. And that during that year you had only paid in a small amount,—you say about one hundred dollars a month? You say that you call the moneys received from plats, fees?

A. Yes, sir.

Q. What do you call money received from field-notes?

A. This is payment of field-notes of counties.

Q. Why are they not fees, the same as those received from plats?

A. Well, they are not daily fees for work done in the office; they are work that it takes months to get through, many times; the pay is not received for months.

Q. Does not the law provide that there shall be fees paid for furnishing field-notes?

A. It provides that they shall be paid into the Treasury.

Q. Is there any difference between the two?

A. I am not aware of any.

Q. Not aware that there is any difference?

A. No, sir.

Hosted by Google

Q. Then are you aware of any law that would require you to pay in the plat money, and not the field-notes money, into the Treasury?

A. Not any special law, sir.

Q. Then your paying the money received for plats into the Treasury and withholding that received from field-notes was simply a custom that grew up in the office?

A. It was our habit to hold these moneys there until we felt disposed to put them into the Treasury.

Q. How long had that habit prevailed in the office.

A. Well, I think we had been making field-notes only about a year. I don't remember when the law was enacted.

Q. Had it prevailed during the whole year.

A. Well, the moneys, that amount that you speak of as being paid into the Treasury, were moneys that were mostly collected during the last two or three months of that year.

Q. But whether the habit of retaining this money had obtained during the whole of the fiscal year 1870?

A. We never had any field-notes until about the date of these collections from field-notes; there might have been some one or two counties that have not paid in; they never were paid in many of them, until the last of the year.

Q. Will you state when the account first commenced of the receipt of these field-notes and plat fees?

A. I can't. I don't remember.

Q. How long after the conversation which you had with Mr. Edmonds?

A. Ask that question again; I don't understand you.

Q. You say that you afterwards, some time during Mr. Edmonds' administration, commenced an account upon one of the books of the office of the receipt of fees from plat and field-notes.

A. Not from plat and field-notes,—from plats.

Q. Was there not put into that account the fees received from field-notes?

A. I think not. That is my recollection.

Hosted by Google

Q. Is it not one of the very first entries on that book, moneys received from Branch county?

A. I would not say positive, for I do not remember.

Q. Just refresh your memory a little.

A. I can't tell without referring to the book.

Q. Are you prepared to say now, that the account does not embrace the fees received from field-notes?

A. It is possible it did, after we commenced making that record; but when it was first put to me, I did not remember it, but I think now, after my recollection is refreshed, I think it was, now, entered. I think it was one of the first entries there was.

Q. After you commenced that account?

A. I think so. I think it was commenced with Branch county, now, come to refresh my memory about it.

Q. In that account were all the fees received from plat and field-notes entered?

A. They were, I guess. I think so.

Q. After the commencement of that account, were they not paid into the Treasury regularly at the end of each month, all the fees received from those sources?

A. Yes, sir, while I was there.

Q. When did you leave the office?

A. I left the office the first of June.

Q. 1871?

A. 1871.

Q. Do you recollect of having a conversation with the Commissioner about the 6th day of June, after leaving the office, in his office, about some entries that should have been made in this account?

A. Yes, sir; I think I do.

Q. Who was present?

A. That I don't remember. Mr. Barnard I think was there. I don't remember who was there.

Q. Do you know a man by the name of Thomas Smalley, of Muskegon?

Hosted by Google

A. I know there is such a man; I should not know him to see him.

Q. Had he applied previous to that time for field-notes?

A. What county is he from?

Q. Muskegon.

A. Yes, sir; I think he had.

Q. Were the field-notes furnished him?

A. I think they were.

Q. What were the charges?

A. I don't remember.

Q. Were they not sixteen dollars?

A. I think they were.

Q. When was the sixteen dollars for these field-notes applied for by Smalley, paid to the office?

A. I don't remember, sir.

Q. In the conversation which you mentioned about the 6th of June, was there any talk between you and the Commissioner concerning this man Smalley, the fees that he paid to the office?

A. I think there was; he accused me of stealing the money, said it had been paid, and I stole the money; that was his accusation.

Q. That was the conversation?

A. Yes, sir.

Q. You did not do any talking?

A. I generally do.

Q. Very well, if you said anything at that time, it would probably form a part of the conversation. Please give it?

A. I could not tell you what I did say to him, sir. I don't remember. I denied it and told him the facts in the case just as it was. I don't remember what was said.

Q. Is it not a fact that those fees of sixteen dollars were paid in a postoffice order?

A. So it seemed afterwards.

Q. Well, it was a fact that it was paid?

A. It was a fact which I found out afterwards.

Hosted by Google

Q. You received the order?

A. I presume so, sir, as I found my name signed to the order.

Q. When did you receive the money on that order at the postoffice?

A. I don't remember. I could not tell.

Q. Didn't you receive it the twenty-sixth of April?

A. I could not say whether I did or not. I don't know when I did receive it. It would be impossible for me to say without reference.

Q. Referring back to the conversation, do you not recollect that by an examination of the books, that you had received it some ten or twelve days after the books were opened. I mean the account now in which the fees for plats and field-notes were kept.

A. Please state that again. I did not understand it.

Q. Referring back to the conversation which you had with Mr. Edmonds, about the sixth of June, I ask you if it did not there appear, from the books in the office at that time, that you had received the money on this postoffice order, ten or twelve days after the opening of that account in which the money should have been entered?

A. Well, I can't say whether I did or not. I don't know. I don't remember.

Q. Whether the date of your receiving the money at the postoffice, was not ten or twelve days after the opening that account on the books of the office?

A. I don't remember, sir. I can't tell you what time it was.

Q. You don't remember?

A. I don't remember.

Q. Do you remember the fact that that item did not appear in that account?

A. I remember that fact.

Q. Do you remember the fact that it should have appeared inthe account?

A. I so stated to Mr. Edmonds at the time, I think. He had also written a letter to Mr. Smalley, asking him if it had

Hosted by Google

been made, or taken, as I had the account mixed in some way that I could not understand it.

Q. Then, from your investigations of the books, did you ascertain that the money was still in your hands?

A. Yes, sir.

Q. Now, you say that Mr. Edmonds charged you at that time with stealing the money?

A. Yes, sir.

Q. Were there some hot words used on both sides at that time?

A. I presume there were.

Q. State whether you made any threats towards Mr. Edmonds, and if so, what?

A. I don't remember of making any threats. I don't remember what was said.

Q. Did the Commissioner at that time tell you that he wanted you to pay the money over?

A. Yes, sir, I think he did.

Q. Did you tell him that you would pay him when you got ready?

A. I Don't know but I did. I paid it to him when he told me to.

Q. Didn't he then tell you that you must pay it over by five o'clock the next evening, or he would make you pay it?

A. He may have told me so; I don't remember the conversation that passed between us; I could not tell you the words.

Q. Do you recollect the fact that you came in the next morning, and laid it down on his desk?

A. I handed it to Mr. Edmonds.

Q. Didn't you then and there, in that conversation, tell Mr. Edmonds that you would see that he was ousted from his office, or words to that effect?

A. Not that I remember, sir. No, sir; I think not.

Q. Didn't you tell him then that he would not be in office again.

A. I don't know that I did, and I don't know but I did; I

Hosted by Google

annot tell you what I did say. I don't remember the conversation that passed between us.

Q. You say that you think the conversation was in the presence of Barnard?

A. I am inclined to think he was present, I am not positive.

Q. Was not Robinson, the chief clerk, there also.

A. He might have been; I don't remember who was present; I could not say.

Q. You think there was something said, do you, about the office,—about his not being an officer again?

A. The general conversation between us both, or what the conversation was word for word, or the whole, I can't remember.

Q. Whether there was anything said, whether you have any recollection of anything being said about his not holding the office afterwards?

A. I don't remember of saying any such thing. I might have said it. I don't remember that I did, however.

Q. Mr. Porter, do you know a young man in the office by the name of Merritt Lewis.

A. Yes, sir.

Mr. Romeyn—Mr. President, the Gentlemen Managers have called my attention to the fact, that the Senate has not yet made provision for the payment of the expenses and fees of the witnesses. I understand from the counsel for the respondent, that the cross-examination of the witness now upon the stand will last some time longer, and I therefore, for the purpose of making proper provision for these expenses, move that the Senate chamber be cleared, and that we proceed to consider the subject.

The motion was agreed to and the Senate chamber was cleared of all persons except the Senators and officers of the Court. After remaining in session with closed doors until twenty minutes before five o'clock, the doors were again opened, and the following proceedings took place:

Mr. Briggs—Mr. President, I move we adjourn until to-morrow morning.

Hosted by Google

The Presiding Officer—I will state to the Senator that both the counsel on the part of the impeachment and for the respondent understand that there will be no further business done, and that they have sent their witnesses home.

Mr. Romeyn—I will call for a division upon the motion to adjourn.

Mr. Ball—Mr. President, although there is nothing properly that I can speak upon before the Senate, I would like to make a suggestion, with the consent of the Senate. We have been talking about the hour of adjournment and it has been suggested by the Senators that we work three hours in the forenoon and two hours in the afternoon,—from nine to twelve in the morning, and from two to four in the afternoon,—and the gentleman, I believe, has moved to adjourn until nine o'clock in the morning.

The Presiding Officer—There was a division called for upon the motion to adjourn.

Mr. Wheeler—I move to adjourn to the particular hour of nine o'clock.

The Presiding Officer—The Senator from the Third moves that the Senate, sitting as a Court of Impeachment, now adjourn; upon that motion a division is called for.

Mr. Wheeler—I wish to inquire if we can amend that motion by adjourning to a certain time.

The Presiding Officer—The motion to adjourn takes precedence.

A vote being taken upon the motion to adjourn,

The motion did not prevail.

The motion to adjourn until nine o'clock then prevailed.

The Presiding Officer then declared the Senate, sitting as a Court of Impeachment, adjourned until to-morrow morning at nine o'clock.

Hosted by Google

Friday, A. M., May 3, 1872.

The Senate met and was called to order by the President *pro tem.*

The Sergeant-at-Arms made the usual proclamation.

Roll called: quorum present.

Absent without leave: Senators Bennett, Jenks, and Stoddard.

The Presiding Officer—A quorum of the Senate is present. The following communications have been received, which the Secretary will read:

The Secretary read as follows:

"LANSING, MICH., May 1, 1872.

"*Hon. P. H. Emerson, Presiding Officer of the Senate:*

"SIR—The most pressing and important private and public business render it imperative for me to resign the position of Senator of the Fourth Senatorial District."

"Very respectfully, your obedient servant,

"S. BROWNELL."

Senator Waterbury—I ask who are absent without leave?

The Presiding Officer—The Secretary will inform the Senator.

The Secretary read the names of the Senators absent, which were as follows: Senators Bennett, Jenks, and Stoddard.

The Presiding Officer—The following communication has been received, which will be read by the Secretary:

The Secretary read as follows:

"*Hon. P. H. Emerson, President pro tem.*

"I hereby resign my position as State Senator for the 10th District of Michigan.

"T. G. BENNETT.

"LANSING, May 1st, 1872."

Senator Wheeler—Mr. President, Senator Stoddard received a telegram yesterday, that his son was very ill, and requested me to ask indefinite leave of absence, which I do.

Indefinite leave of absence was granted to Senator Stoddard.

Hosted by Google

Senator Wheeler—Mr. President, Mr. Jenks is sick in his room and desires leave of absence for the day.

Leave of absence for the day was granted to Senator Jenks.

Senator White—Mr. President, it is with some reluctance that I ask leave of absence from and after Saturday, the 4th. I do not ask this on matters of business, but on account of family considerations.

Leave of absence was granted.

The Presiding Officer—When the Senate adjourned yesterday afternoon, the counsel for the respondent were examining a witness.

Senator Romeyn—Before proceeding further, I desire to present a resolution for adjournment.

The Presiding Officer—The Secretary will read the resolution.

The Secretary read the resolution, as follows:

Ordered, That the hours of session of the Senate sitting as a Court for the trial of Charles A. Edmonds, now pending, shall be from 9 o'clock A. M. to 12 o'clock M., and from 2 o'clock to 4 o'clock P. M., on each day of the trial, unless otherwise ordered.

The resolution was adopted.

The Presiding officer—Are the counsel for the respondent ready to proceed with the cross-examination?

Mr. McGowan—We are.

Senator Wheeler—I rise to a question of privilege.

The proceedings of yesterday were greatly interrupted by messenger boys; there is not care enough in moving about the Hall. It is difficult for us to hear, and the Chair has experienced some difficulty on account of the audience coming in and going out. I wish the Sergeant-at-Arms and the boys would take a little more care in this matter and see if they cannot be a little more quiet.

The Presiding Officer—The officers of the Senate, and the messenger boys, will be a little more quiet in moving about the Senate, and the audience also as much as possible.

Hosted by Google

Mr. McGowan—We supposed the witness would be on hand this morning, as his examination was left unfinished yesterday.

Mr. Manager Huston—I saw the witness a few minutes before nine and told him to come right up. I supposed he would come.

The Presiding Officer—During the trial, the Honorable Managers, and counsel for the respondent, will see that the witnesses are here and take their places on the stand, promptly. I would suggest that the Sergeant-at-Arms be sent for the witness.

Mr. Shipman—The question which we were to take up this morning was regarding the admissibility of testimony under the 8th, 9th, and 11th articles. I desire to state that we shall raise no question. I desire further to state the reason why we, as lawyers, of course were anxious to try this in a lawyer-like way; to raise questions in the order in which they should be raised as we reach them in the trial of the case, and we were anxious to see that no precedents should be established that were not warranted by the laws of this State in actions of this kind, and hoped and expected to take the matter up and present it as we reach the articles in question; but we are instructed by Mr. Edmonds not to raise any objections to them, and I don't feel at liberty to disobey his instruction in the matter. It is for that reason we don't raise the question here. At the same time, when the evidence is in and the testimony closed, we shall then claim the right to be heard on these articles.

Mr. Manager Grosvenor—That announcement tends somewhat to disarrange the presentation of the proofs, because under the intimation of yesterday we gave due consideration to meet this subject this morning, and witnesses are not prepared as they were day before yesterday. We may ask a little indulgence on that account, in the manner of presenting the testimony. We will examine such witnesses as we have here,

Hosted by Google

but may perhaps not present them in consecutive form as we had planned.

The Presiding Officer—I would suggest to the Senators that if they would have as little business going on among themselves as possible when the witnesses are being examined, they will have but little occasion to call on the messenger boys, and thereby save a great deal of running around. The counsel for the respondent will proceed with the cross-examination of the witness.

E. H. Porter again took the stand.

CROSS-EXAMINATION OF E. H. PORTER, CONTINUED.

Cross-examination continued by Mr. McGowan:

Question. When did you first commence work in the Land Office?

Answer. I commenced work in October, 1866.

Q. In what capacity?

A. As clerk.

Q. Under whose administration,—who was Deputy?

A. Mr Hewitt was Commissioner; he had no Deputy.

Q. He had no Deputy?

A. No, sir.

Q. How long did you work in the office as clerk?

A. Until July, 1867,—the first of July.

Q. Then what capacity did you work in?

A. As Deputy Commissioner.

Q. Who was Commissioner at that time?

A. Gen. B. D. Pritchard.

Q. How long had Mr. Pritchard been Commissioner when you were made Deputy?

A. Since the first of January of that year.

Q. From January to July?

A. Yes, sir.

Q. Had he a Deputy previous to your being appointed as Deputy?

A. Mr. Hewitt was his Deputy.

Hosted by Google

Q. How long did you remain in his office as Deputy Commissioner?

A. During his term of office,—the balance of the four years he was there.

Q. From the time you entered the office in 1866, until the first of June 1871, were you constantly employed in the Land Office?

A. Yes, sir.

Q. Under what Commissioners were you employed?

A. From the time I went in as clerk?

Q. Yes, sir.

A. Mr. Hewitt up to the first of January, and by Gen. Pritchard from the first of January, 1867.

Q. And then Mr. Edmonds?

A. Yes, sir, and then under Mr. Edmonds.

Q. Now, you spoke yesterday of fees that were received from field-notes, and, if I recollect correctly, stated that there were no such fees received until within a year or so ago. Did I understand you rightly?

A. The fees, I presume, were received; but no fees were ordered to be paid into the office until 1869.

Q. State what the practice was about fees received from field-notes previous to the time they were ordered to be paid into the Treasury.

A. Well, sir, I don't know what the practice was,—really, I cannot tell you. I don't know as any was made.

Q. Were there any moneys received from that source?

Mr. Manager Grosvenor—I don't know that I want to object to the testimony, but I would like to have the counsel state for what purpose they make this examination.

Mr. McGowan—Very willingly. Mr. President, we desire, so far as we can, to get at the practices of the office previous to the administration of Mr. Edmonds, so far as they may bear upon the administration of Mr. Edmonds,—any practices that have any bearing at all upon his administration, which may be involved in the issue here before the Court. I propose to show

Hosted by Google

here, by this witness, that the practice of receiving fees from field-notes commenced long previous to the law of 1869; and it was then appropriated, by the Commissioner or his Deputy, to their own personal use. That on and after the operation of the law of 1869, the money was ordered to be paid into the Treasury; and that the law that required the money from plats to be paid into the Treasury, also required the money from field-notes to be paid into the Treasury, designating the money from both sources as fees. And after that law came into operation, that the practice that had existed previous to it, of at least using moneys for personal ends, a portion of it still continued until the administration of Mr. Edmonds; that when he ascertained that to be the fact, that he ordered this witness, the Deputy, to pay the moneys over to the Treasury as fast as they accumulated; and that out of that grew the ill-feeling that culminated in the discharge of this Deputy.

Mr. Manager Grosvenor—It would evidently appear that the respondent was to make his case or a portion of it on the cross-examination of the people's witnesses. For the purpose of saving time we will allow it to be taken, but hope that the Senate will remember that we are entitled to take a witness and cross-examine him on these matters, as though he was their witness. They simply make him their witness. It is not a cross-examination. We are not bound by it, but may cross-examine these witnesses upon some matters. But if they interrogate him, it is not to be taken as—

The Presiding Officer—The Honorable Manager makes no reservation.

Mr. Manager Grosvenor—No, sir.

Mr. Manager Cochrane—We wish to have it understood that this witness now is not our witness. They have a right to show the ill feeling on the part of the witness, to show the witness's feelings which already existed, but not to show how it originated as far as any of his circumstances may have any bearing in the case; and the answers in the case are the witness's and not belonging to the respondent.

Hosted by Google

Mr. McGowan—We do not propose to take the answers of the witness and be bound by them; nor do we propose to examine him as our own witness. We do not think we are outside the rules of cross-examination in any court. It will be recollected on the examination yesterday, in chief, he was asked in regard to the practices of the office. He said he explained this to Mr. Edmonds about the first or second week of Mr. Edmonds' official term. He went on to state what the practices had been. We propose to follow, to show what the practices were. All the practices that we wish now to bring out, bearing upon the case, were considered. They legitimately opened the door for us to get out the matters. They went into that; and if we can show that there were matters in the office which ought not to have been,—if Mr. Edmonds rectified these without regard to the question whether ill-feeling grew up, I think we had better continue the legitimate line of cross-examination. We don't propose to be bound by the answer of the witness. A cross-examination is not limited to the time, but to the subject matter, although the cross-examinations so far, are as to the time. They asked him yesterday what the practice was before that time.

The Presiding Officer—Allow me to suggest to the counsel that there is no motion before the Senate; the Honorable Managers make no objection.

Mr. McGowan—I apologize, if I am out of order. The Honorable Manager said that it was to be considered as our testimony.

The Presiding Officer—We can make no contracts.

Mr. Manager Huston—We only interrogated as to scrip.

The Presiding Officer—The counsel will proceed.

Q. Will you state what was done with the moneys received from field-notes and plats?

Mr. Manager Grosvenor—We shall object to that, as we understand that this witness was only interrogated as to the subject of the purchase of land and the sale of scrip, and he

Hosted by Google

referred back to former usage as to the sale of scrip. The door is open, and he may go into it—

The Presiding Officer—The ground of the objection is that it is improper cross-examination.

Mr. Manager Grosvenor—It is.

Mr. Shipman—I will state that the principal question was, What is the practice of the office? and further, if this is the practice of this office?

Mr. McGowan—I will simply state this circumstance that the Senate may remember the fact. I asked the Manager who asked the question, whether he was asking a question in regard to the conversation between Mr. Edmonds and the witness, concerning the practices preceding that, and he said that he was asking in regard to the practice. He had asked about the conversation, but was then asking as to the practice.

Mr. Manager Huston—That was confined wholly to the matter of scrip. I called attention directly to that subject, in regard to the arrangement that he made with Mr. Edmonds in reference to buying scrip, and entering lands with scrip, when money was sent for the purpose of purchasing lands, and he said that he explained to Mr. Edmonds what had been the practice prior to that time; then I asked him what the practice was in the prior administration, in order that we might get at the facts upon the objection raised by the gentleman,—that we might get at just what he said to Edmonds on that subject. As Senators will remember, when the objection was made, I stated that the reason why I asked him the question in regard to the practice, was to show what the practice was there in regard to this particular matter, and that was all. I interrogated him in reference to that; I did not ask him a word about field-notes or plats, or anything in regard to the practice of the office, or paying over the money upon any other excepting in connection with the purchase of swamp land.

The Presiding Officer—Upon this question the Chair will take the vote of the Senate. The question is, Shall the question be put to the witness. As your names are called, those in

Hosted by Google

favor will say Aye; those opposed will say No. The Secretary will call the roll.

The following is the vote of the Senate, on this question:

YEAS.

Mr. Alexander,	Mr. Mann,	Mr. Wilcox,	
Barber,	Moffatt,	Wood,	
Begole,	Price,	President	
Briggs,	Prutzman,		*pro tem.*
Hannahs,	Romeyn,		
Jenks,	Sheley,		15

NAYS.

Mr. Ball,	Mr. Putnam,	Mr. Waterbury,	
Cawley,	Stockbridge,	Wheeler,	
Dexter,	Storrs,	White,	
Neasmith,			10

The Presiding Officer—On this question, the yeas being fifteen, nays ten, the Senate require the question to be put to the witness.

Mr. McGowan—Will the reporter read the question?

The reporter read the question as, follows:

"Will you state what was done with the moneys received from field-notes and plats, previous to 1869?"

Mr. McGowan—Witness, answer the question.

A. I think the practice was for the Commissioner to hold them in his own hands,—to receive it himself. It never went into the Treasury.

Q. Under what law were the fees which were received from field-notes paid into the Treasury?

A. I think the law of '69. I am not positive.

Q. Under what law were the fees received from plats paid into the Treasury?

A. The same law, I presume.

Q. Do you recollect whether there is any distinction, in that law, made between fees received from plats and those received from field-notes?

A. I do not think there is, sir.

Hosted by Google

Q. Are they not all designated as fees in that act?

A. I cannot give the wording of the law, but I think they are.

Q. You have spoken, in your examination yesterday, of having an arrangement with Mr. Edmonds soon after you came into the office, to go on with the scrip business, did you not?

A. Yes, sir.

Q. You will please state now, to the Senate, what that arrangement was.

A. The arrangement was to purchase scrip.

Q. State as near as you can, Mr. Witness, what the talk was between you and him,—what you said, and what he said, as near as you can recollect.

A. I told him the practice of buying and selling scrip.

Q. Well, what did you tell him?

A. It is impossible for me to give it in words, anything more than to say that I was in the habit of buying scrip at its lowest figures and selling it at its market value,—whatever it was worth,—and that there was a profit of course upon it; and asked him whether I should continue it or not; if so, I would give him one-half of the profits of the scrip sold. That was the amount of it, in words, perhaps, as near as I can come to it.

Q. What further talk do you remember concerning it, if anything? Did you say anything to him about the arrangement which you had formerly with the former Commissioner?

A. I think I did.

Q. What did you say to him?

A. I think I told him I had divided with Gen. Pritchard one-half of the profits.

Q. The arrangement then that you made with Mr. Edmonds was the same that you had had with Gen. Pritchard?

A. The same.

Q. Mr. Porter, was the arrangement then and there made, and did Mr. Edmonds consent to it, that you should continue that business the same as you had with Gen. Pritchard?

A. He did, I think.

Hosted by Google

Q. You were to pay him one-half the profits?

A. Yes, sir.

Q. Who was to furnish capital for carrying on this business?

A. I do not think anything was said in regard to that; I do not remember that there was.

Q. When was this talk with the respondent?

A. It was some time in January—the second or third week; I cannot tell what time.

Q. Where was it?

A. It was in the front room of the Commissioner's office.

Q. What is now known as the "old office?"

A. Yes, sir.

Q. Who was present aside from you and Mr. Edmonds?

A. No one.

Q. When did you have the conversation with Mr. Edmonds, in which you told him about the practice of the office when money was sent to buy land?

A. The same time that I told him in regard to the purchase and sale of scrip, I think.

Q. What did you say to him about that?

A. I related to him the practice of the office.

Q. What did you say to him?

A. I am not positive, sir, what I did say. I cannot give it in words.

Q. Well, as near as you can?

A. I told him the general practice of the office in the purchase and sale of scrip.

Q. Then what was the general practice of the office with regard to money sent for buying lands?

A. It was to receive the money that came into the office, and use scrip in place of it,—that is, take scrip to enter the land with, and use the money.

By Mr. Manager Huston:

Q. How is that?

Witness—To receive the money, and to enter the land with scrip: that was the practice.

Hosted by Google

Q. And keep the money?

A. Yes, sir.

By Mr. McGowan:

Q. Now, you may explain a little more fully in regard to that; take an instance and illustrate it, if you please?

A. Well, sir, if you was to send a hundred dollars to the office to enter 80 acres of land, the practice would be to put the money with your scrip money, and to enter it with the hundred dollars of scrip.

By Mr. Manager Huston:

Q. Enter the land with scrip?

A. Yes, sir.

By Mr. McGowan:

Q. And to charge the land up to the account of the Deputy Commissioner,—his scrip account?

A. Yes, sir, to whatever scrip that you add to his credit, whatever it might be.

Q. I understand you now that that was the practice of the office previous to Mr. Edmonds coming into office?

A. I think it was.

Q. How long had it been the practice of the office?

A. During my time there. I cannot say anything back of that positively,—only from hearsay.

Q. You stated yesterday, that you had no recollection of any occurrence of that kind, during Mr. Edmonds' administration.

A. Well, sir, in thinking the matter over, I think I have a recollection of one instance in which a piece of land was applied for in that way, and since proved to be government land. I returned the money personally, myself. Understand. I am not positive whether it came under his administration, or whether it was before, but I think it was.

Q. What was the applicant's name?

A. That I could not tell you,—I do not know.

Q. Where was he living?

A. That I do not know,—I do not know where he lived.

Hosted by Google

Q. What are the facts, as you remember them?

A. The facts, as I remember them, are, that it was a fractional piece of land, I think, in the Upper Peninsula. I think the money sent was something between 17 and 18 dollars and a fraction. Afterwards the land proved to be government land, and the patent was returned, I presume, to the office. I, from investigation, found that the land had been entered with scrip. I returned the money in place of the scrip, and had the scrip placed back to my credit again.

Q. When did you return the money?

A. During the last session of the Legislature.

Q. After you had left the office?

A. Yes, sir.

Q. How did you send it?

A. I gave it, in person, to the party having the order for it?

Q. The party was here?

A. Yes, sir.

Q. You do not recollect the name?

A. The man that I gave it to was Mr. Swineford, I think.

Q. Do you recollect any other transaction while Mr. Edmonds was Commissioner?

A. I am not positive of any other transaction.

Q. Was Mr. Edmonds' attention called to this transaction, at the time the money was sent?

A. I am not aware that it was.

Q. Do you know whether he had any personal knowledge of this transaction at all or not?

A. I am not aware that he had.

Q. If the money was sent for the purchase of this land during Mr. Edmonds' administration, you took the money, and made up the land to the man on the purchase, did you not?

A. I did.

Q. After the first conversation that you had with Commissioner Edmonds, concerning the practices of the office in purchasing lands where money was sent, state whether you ever had any other conversation with him about that subject-matter.

Hosted by Google

A. In regard to the purchasing of scrip?

Q. No, sir; the purchase of lands with money, entering it up with scrip, against somebody's scrip account. Whether you ever had any more than one talk with the Commissioner about it.

A. Well, I am not positive. We had talk at different times, but I could not say, particularly, whether that matter was brought up again or not. I do not know.

Q. Mr. Porter, did not Mr. Edmonds speak to you about it about three months after he came into the office, in March some time?

A. I do not remember that he did; he may have done so.

Q. Did he not inquire of you if that was the practice of the office?

A. He may have done so. I cannot remember positively in regard to those questions.

Q. Did you not then tell him that it was and had been during the whole of Mr. Pritchard's administration?

A. If he asked me the question, I presume I did; I do not remember of any such question being asked.

Q. Did he tell you then that if such cases occurred again that the money should be paid into the Treasury and the land entered as a cash purchase?

A. Well, my recollections are that he did not at that time; but after I left the office, I think, he then spoke of it.

Q. Did he ever give you any such instruction while you were in the office?

A. I am inclined to think he did; still I am not positive that he did. I think, perhaps, he did at one time afterwards. I do not remember what time it transpired, but my recollections are that what was said in regard to placing of moneys in the office in the hands of the Treasury, which was received by parties in that way, transpired after I left the office; that is my recollection now. I am not positive in regard to it. I could not say.

Q. If he did speak to you about it, and directed you to pay

Hosted by Google

the moneys into the Treasury before you left the office, about what time was it?

A. Well, it could not have been long before I left the office; as I received notice to leave the first of May.

Q. Would you say it was before or after you received that notice?

A. My recollections are, that it was after. I think so. I can not state positively in regard to that, for I do not remember; there are so many things connected with it.

Q. How frequently did you and Mr. Edmonds divide the profits from the scrip business?

A. The first of every month.

Q. How many divisions were made.

A. Three, I think.

Q. Did you continue the scrip business during the last two months you were in the office?

A. I did.

Q. You did not pay over to him his share after that?

A. I did not.

Q. Was it the practice of the office, previous to Mr. Edmonds' administration, for you to skip a couple of months of time, without dividing with your principal?

A. No. Sir.

Q. Did you always divide at the end of each month?

A. No, sir, not at the end of each month.

Q. Well, at the beginning of each month,—monthly?

A. Well, many times it happened that the General was not here. I waited until he came.

Q. I wish you would explain to the Senate a little more fully with regard to the moneys that were left in the safe, which you stated yesterday that you used for the purchase of scrip, and in your scrip business.

A. Well, sir, they were moneys, there were perhaps twenty, and I don't know but more envelopes; they were small amounts, from $2.50 up to ten, fifteen, or twenty dollars, as the case might be. It had been left there from some cause,

Hosted by Google

many of them unknown to me. I can't tell why they were left there,—why they were there. They had been there and been handed from one Commissioner to the other for a number of years,—a good many years back.

Q. To whom did these moneys belong?

A. Belonged to individual parties outside, somewhere.

Q. Did any portion of them belong to the State?

A. No, sir, not that I am aware of.

Q. You say you arranged with Mr. Edmonds for the use of these moneys whenever you chose to do so?

A. He gave me full liberty to borrow them from the envelopes to use in case of necessity in buying scrip.

Q. Was that in the same conversation in which you made the bargain with him to go into partnership in the purchase of scrip?

A. I think it was. It might have been after that, at a subsequent conversation. I could not tell positive in regard to that.

Q. Did you use this money that you got from the envelopes?

A. Yes, sir.

Q. And when you were through, did you return it to the envelopes?

A. Well, I kept it in an envelope and returned it,—most generally immediately from the same or scrip. Always kept it in envelopes, with the number of each envelope marked on it. The envelopes were marked from number one up, to the amount of what envelopes there was, and whenever I took any money out of the envelopes, I indorsed it as borrowed ten dollars from the envelope, or whatever it was. And it was almost invariably returned immediately upon the sale of scrip,—sometimes were held there for perhaps a month.

Q. Were there any other funds than current funds in these envelopes?

A. Yes, sir. I think there were some drafts there, but they never have been used.

Hosted by Google

Q. Was not there some old currency?

A. Yes, sir.

Q. State bank notes, and other things?

A. Yes, sir, there was.

Q. Now, Mr. Porter, is it not a fact that you took from these envelopes what money there was that was current, and put it into your own private account?

A. I borrowed it very frequently, sir.

Q. Mr. Porter, did you not take from those envelopes all the money that was current, and put it into your own private account?

A. No, sir, I did not,—never.

Q. What portion of the money from those envelopes did you ever have at any one time.

A. I could not tell you now what amount there was in them, fully, but I presume that it would run up as high, perhaps, as ten or twelve hundred dollars; the several amounts I could not state positively.

Q. Do I understand you that there was ten or twelve hundred dollars of current funds in the envelopes, you think?

A. Well, it would be guess-work for me to say; I could not tell how much there was.

Q. Well, when you speak of ten or twelve hundred dollars, you mean the amount in the envelopes?

A. I think there was that in current money; that is my recollection about it.

Q. Now, sir, when you left the office in June, didn't you have every dollar of that current money out of those envelopes and in your own private account, and put it back into the envelopes?

A. I didn't have it in a private account; I had it in an envelope, by itself entirely and alone, and outside of my private account.

Q. Where was the envelope in which this money was?

A. In the drawer or desk which I used, or in the safe. I

Hosted by Google

am not positive whether it was in the safe or in the drawer. It was most usually kept in the safe.

Q. Then, is it a fact that all the current funds belonging to these envelopes were out of the envelopes and in a single envelope at times?

A. No, sir; I think that was not a fact.

Q. Do you recollect that Mr. Edmonds ordered you to return to those envelopes the amount that belonged in each?

A. No, sir; he did not. It was a matter of my own.

Q. Didn't he direct you to do so, and didn't you do so, and didn't you make a statement of it?

A. He didn't direct me to do so.

Q. Do you recollect that you made a statement to that effect?

A. I don't think I did.

Q. And handed it over to Mr. Edmonds?

A. Yes, sir; when I left the office.

Q. Will you look upon that paper? [Showing witness a paper.]

A. That is my writing.

Q. Is that the statement you made concerning that matter?

A. I presume it is,—I do not know.

Q. Did you have the amount of moneys on that statement out of the envelopes, and in use for the purchase of scrip?

A. I presume that I did, sir. I did have it out frequently.

Q. Now let me see if we can refresh your recollection with regard to the purchase of that land where the sixteen dollars was paid in money. Was it George Sheldon?

A. Well, sir, I could not say what the name was. The order transferring the scrip back to me, I think, would give the name. I an not positive.

Q. [Showing a paper] Mr. Porter, will you look upon that indorsement, and tell me who made it?

A. It is my indorsement.

Q. Now, will you look at the paper and state whether that

Hosted by Google

will refresh your recollection any with regard to the sixteen dollar transaction?

A. Yes, sir.

Q. Does that paper relate to that case?

A. I presume it does.

Q. Don't you *know* whether it is or not?

A. I can't swear, sir, positively.

Q. Is n't that the order on which the land was entered?

A. I presume it is, sir; I can't remember the facts in the case, it is so long ago.

[The papers were handed to the Managers for inspection.]

Q. Will you state now, after seeing that paper and refreshing your memory in regard to it, whether that transaction occurred in Mr. Edmonds' administration or not?

A. I say now, as I said before, I don't remember whether it did or not. I don't remember the date of it. I did'nt look at the date.

Q. Well, sir, we will return the paper to you. [Paper handed to witness by Mr. Cochrane.]

A. It did not, from the date of this, if this is the one.

Q. You were asked yesterday, Mr. Porter, with regard to the law of 1868, which is termed the graduation law, 1869,—will you state what the lands under that law were selling for at the time Mr. Edmonds commenced his duties as Commissioner?

A. My recollections are that the lands were graduated to four dollars an acre at that time.

Q. What was the minimum price when they were first put in the market?

A. Ten shillings,—a dollar and twenty-five.

Q. No,—these *graduated* lands?

A. Six dollars.

Q. Your recollection is that when Mr. Edmonds came into the office, they had been graduated down to four dollars?

A. I think they were selling at four dollars at that time,—were graduated to four dollars. I am quite sure they were.

Hosted by Google

Q. Mr. Porter, what was your custom in the office with regard to copying letters,—official letters?

A. We copied all letters, usually, of importance, that came into the office. Not accustomed to copy every letter that was sent out, of our correspondence.

Q. You think that all important letters were copied?

A. I think they were. That was the usual custom.

Q. Who marked up the lands that were marked with initials "Reserved Lands?"

A. It was sometimes done by myself, sometimes by Mr. Robinson, I think, one of the clerks.

Q. While you were Deputy, did you and Mr. Robinson mark all, or nearly all, of the lands that were marked up?

A. Well, perhaps not of all of them.

Q. Nearly all?

A. I should think so.

Q. Do you know a firm in this town by the name of Jones & Porter?

A. Yes, sir.

Q. Is the Mr. Porter of that firm any relation of yours?

A. Yes, sir; he is a brother of mine.

Q. State whether they had a large quantity of lands marked up, on the books of the office, at the time Mr. Edmonds came into office?

A. I think there was, sir, certain pieces there marked to them.

Q. Was there not a large quantity of land marked up to them?

A. There is a quantity of land marked to them there yet that they hold, I believe.

Q. Who marked up the lands to Jones & Porter?

A. What lands are you speaking of, sir?

Q. Those that appear marked up to them on the books of the office.

A. I would like to know what kind of lands they are, and then I can answer.

Hosted by Google

Q. Well, sir, who generally marked up any kind of lands that were marked to them?

A. I think I marked all the lands marked to them.

Q. You marked all the lands that were marked to Jones & Porter in that office?

A. I presume I did; I am not positive. No; I think I did not. I think, perhaps, Mr. Robinson marked some; I am not positive.

Q. If he did do it, at whose direction was it?

A. By mine, I presume.

Q. So that you either marked yourself, or directed the clerk to mark, all the lands that were marked to Jones & Porter?

A. Yes, sir.

Q. Now, sir, at the the time you left the office, did you order Mr. Van Dunham, a clerk in the office, to remove the marks from these lands to Jones & Porter.

A. I don't know whether I did or not. I don't remember of ever having any conversation with Mr. Van Dunham with regard to it.

Q. You have no recollection of having any such conversation?

A. I have not.

Q. Did you, at the time you left the office, direct Mr. Robinson, the chief clerk, to remove the marks from these lands of Jones & Porter?

A. I think there were some three or four, perhaps a half a dozen pieces of land that had been marked up during the sale, or which they had claimed, and the lands had been left on the books, and from some cause or other, I can't say what, they could not hold, or did not hold.

A. Well, sir, did you direct Mr. Robinson to remove any marks from the books?

A. I think, perhaps, I may have told him to do that.

Q. Don't you recollect that you did?

Mr. Manager Huston—At what time was that?

Mr. McGowan—At the time he left the office.

Hosted by Google

Witness—I think I had conversation with Mr. Robinson once or twice with regard to this; that they didn't claim the lands or they could n't hold the lands.

Q. State, Mr. Porter, what you said to Mr. Robinson with regard to removing the marks.

A. I can't tell you. I don't remember the words that I said.

Q. State whether you gave any directions to remove the marks.

A. I think probably I did.

Q. Don't you *know* that you did?

A. Well, sir, all that I can say with regard to that is this: I told him this, that they did n't claim these lands and did n't have credit to hold these lands, and that the lands did not belong to them. I can't state anything more positive than that.

Q. Having stated to him that they had no claim to the land and had no credit on which they could hold the land, did n't you then tell him to remove the marks from the books?

A. Possibly I did, sir. I think I did,—quite likely. It would be very natural for me to do it.

Q. How long had those marks been upon the books that you ordered removed, if you *did* order any removed?

A. From the time of their application,—about the time of the sale.

Q. When was that?

A. I think the last sale was in—I am not positive whether it was in 1869 or 1870,—1869 I think.

Q. Then these marks that you ordered removed by Robinson at the time you left the office in June, 1871, had been upon the books since 1869 and 1870?

A. I think they had.

Q. State, Mr. Porter, whether you, as Deputy, ever had any work done outside of the office, for the office?

A. Yes, sir.

Q. How did you pay for that work?

Hosted by Google

A. Paid from the proceeds of the work?

Q. Did you make any record of it?

A. No, sir.

Mr. Manager Huston—When was that?

Mr. McGowan—At any time when he was acting as Deputy I am not particular; I will ascertain that more fully from the witness.

Mr. Manager Cochrane—Mr. President: I do not know but this has something to do with this case, and as stated by counsel, I don't know but it has something to do with the ill-feeling, and perhaps it will tend to prove ill-feeling between this witness and the respondent. But it certainly seems to me a most remarkable cross-examination. We have not asked anything about reserved lands. We never have asked anything about his having business done outside of his office, or how he paid for it; and while it is true that the rule of cross-examination in this State is very broad, still it is equally true that the cross-examination must be confined to the subject-matter upon which the direct examination is confined.

The Presiding Officer—Does the Honorable Manager make an objection?

Mr. Manager Cochrane—I do make an objection. I would like to hear some explanation of it. I make an objection for that purpose.

The Presiding Officer—Do counsel for the respondent wish to be heard?

Mr. McGowan—I do not know, Mr. President, that I can add much to the explanation I have already made. The cross-examination has been wholly with regard to the practices of the office. We propose to show that these practices continued down to Mr. Edmonds' administration, and that they were changed; that they were bad practices, and it was necessary to remove this man in order to get them changed. We shall show the Honorable Managers, before we get through, that he resisted every change that was attempted to be made in the administration of the office, in these regards.

Hosted by Google

Mr. Manager Cochrane—I would say, Mr. President, with regard to that, that it is true that the question was asked the witness what the practices of the office were; but at the time the question was asked, the subject upon which he was being examined was as to the practice relative to scrip. The witness so understood it. The Managers understood that they were inquiring simply in regard to that; they may have used a general term, but no answer was given on the part of the witness showing that he understood anything different. We certainly did not understand anything different, and I presume the Senate did not understand anything different. I did not suppose that when we were asking that question, in that immediate connection, that we were asking a question as to what clerks were in the office, with regard to the outside business, with regard to the fees,—upon which the Senate has already passed, however, but simply his answer was—his attention was being directed at the time to this matter of scrip. But, at all events, the excuse which was given for this cross-examination a short time since, was that it would tend to show the ill-feeling between this witness and the respondent. Now, if this tends to show the ill-feeling, or does show it, why, perhaps, they may introduce it; although I did not know that the ruling of the Senate went to that extent, that they might go into specific matters to show that ill-feeling. However, I wish to submit to the President and the Senate, that for the purpose of showing that ill feeling, they must first ask—before they can go into specific matters to show that ill-feeling—whether he has any ill-feeling. They cannot be permitted to question a witness here as to specific matters, go on and show long transactions, and then ask him, after they have got that out, whether any ill-feeling has resulted to him from that. That is not the way to elucidate this matter.

The Presiding Officer—Do counsel for the respondent wish to be heard?

Mr. McGowan—There is no question, I believe. I asked no question. It was a general objection.

Hosted by Google

Q. Will you state whether you have any recollection of field-notes made for Kent county, made during Mr. Edmonds' administration?

A. I presume there were. I can't tell the counties we made. I think so. Yes, sir; I do remember it.

Q. State whether the field-notes furnished Kent county were paid for?

A. I think they were commenced before Mr. Edmonds came in. That is my recollection now.

Q. Was the pay received for the same after Mr. Edmonds came in?

A. Yes, sir.

Q. Who received it?

A. I received it.

Q. What did you do with it?

A. I paid for a portion of it, that had been given out, and the balance went into the Treasury.

Q. Do you recollect how much was received from that source?

A. I can't give the amount now, sir. I have forgotten the number down in that account.

Q. Do you know Hobart H. Chipman, clerk of Kent county?

A. I don't know him personally.

Q. Did you communicate with him concerning these field-notes?

A. I can't tell, sir, who I did communicate with.

Mr. McGowan [to the Managers]—I will just ask him if he recognizes the handwriting in this paper.

Q. State whether you recognize the handwriting in that paper?

A. I could not recognize it from anything special. It seems to be a letter written after I went out of the office.

Several Senators—What was the answer?

Witness—I do not recognize the writing from any source.

Hosted by Google

Mr. Manager Huston—Who does the letter purport to be from?

Mr. McGowan—Hobart H. Chipman. He says he don't recognize the handwriting.

Q. State whether you recollect now how much was received for field-notes?

A. I don't remember the amount.

Q. About the amount?

A. Well, I cannot tell the exact amount. I guess if I knew the number of towns in the county,—it would be only from remembrance—

Mr. Manager Huston—There are twenty-four towns in that county.

By Mr. McGowan. Twenty-four towns. On that basis how much?

A. Twenty-four full towns, is it?

Q. Figure it on that basis.

A. It would be about a hundred and ninety dollars. Somewhere near that, I think, if they were full towns.

Q. What are the fees for field-notes for a township?

A. Eight dollars is the amount.

Q. [Showing witness a book.] Mr. Witness, will you look upon that book?

Mr. Manager Huston—What book is that?

Mr. McGowan—That is the book of account of the moneys received from field-notes and plats.

Q. State who made the first entries on that account?

A. I did.

Q. Who made the entries for moneys received from Kent county, there?

A. I did.

Q. How much is there entered there as the moneys you received for the Kent county field-notes?

A. A hundred and sixty-six dollars and twelve cents.

[The book was here shown to the Managers.]

Hosted by Google

Q. I believe you stated, that of the moneys paid out for outside help, there was no record kept?

A. No, sir.

Q. Will you state whether any help was employed outside of the office under Mr. Edmonds' administration?

A. Part of this county was, I think. The county had not been fully written up, I think, when Mr. Edmonds came into office.

By Mr. Manager Huston:

Q. Which county? Kent county?

A. Kent county. Yes, sir.

Mr. McGowan—Is that the only instance?

A. I think so, sir; that is my recollection now.

Q. The contract for writing up Kent county, which was made to some party outside of the office, was made before he came into the office?

A. Yes, sir.

Q. And the job was finished after he came in?

A. I think so; that is my recollection.

Q. You are acquainted with Merritt Lewis, a clerk in the office?

A. Yes, sir.

Q. State whether you had any conversation with him at your store, a short time previous to the circulation of the petition, that was presented to the Lower House?

A. I have had conversations with him a number of times.

Q. At your store?

A. Yes, sir.

Mr. Manager Huston—Wait one moment. Will you state the object of the testimony?

Mr. McGowan—Yes, sir. I propose, now, Mr. President, to ask the witness a few impeaching questions, and the questions will explain themselves. An objection is raised. I ask you, now, Mr. Witness, did you not, two or three weeks previous to the 22d of March, 1872, being the day of presenting the petition to the House of Representatives, by R. C. Dart and

Hosted by Google

others, at your store in this city, offer Merritt Lewis money to find out whatever he could against the respondent, and come and tell you, or words to that effect?

A. I say, positively, no, sir!

Mr. Manager Huston—Wait. No foundation has been laid for that. We object.

Mr. Manager Grosvenor—We object to that on two grounds: 1st, That it is an irrelevant question; 2d, That it does not tend to contradict or impair anything that he has testified in relation thereto.

Mr. Shipman—Mr. President, whatever will show the interest, I suppose, is competent always. No foundation could be laid.

The Presiding Officer—The witness has already answered the question.

Mr. Manager Grosvenor—Yes, sir. I do not suppose that there will be any question raised here that this witness is guilty with the respondent; but whatever of testimony related to that, it is already in, I suppose. But when he is asked whether he did not offer some individual money to investigate the transactions of Mr. Edmonds, and bring the information to him, I apprehend that it has no relation to his testimony here. Nor is it an impeaching question. The statement is that they propose now to impeach him. How? In what way? Has he denied that he has any feeling or bias or prejudice in the matter? He has not. Has he said anything in regard to this transaction of the petition that would be inconsistent with his answer, "Yes," or "No." It cannot be an impeaching question, then, because it would not tend to contradict him in anything that he has said before. If it is an impeaching question, as it is claimed by counsel, then they must ask first whether he has any ill feeling, or unkind feeling, or any bias, or interest, then the question would be allowable.

The Presiding Officer—Do the counsel for the respondent wish to be heard?

Hosted by Google

Mr. Shipman—If we are not out of order, Mr. President. We do not so understand the rule; if the witness should answer, I have no unkind feeling, then, under the rule that he would insist upon, we would be shut out of the question. Now, the very object of introducing this question is to show his interest; that he has an interest in prosecuting this matter; and what he has done, what efforts he has made are always admissible as impeaching the statements of the witness here; that is, they show what reliance can be placed upon what has been said,—that is all the object of this. If we can show that he has offered anybody money to swear against Mr. Edmonds, made great exertions against him, taken any particular interest, that is all, and it tends to impeach him. It is an impeaching question.

The Presiding Officer—It seems to the Chair that they would be entitled to the question as showing the interest of the witness. It would go to his credibility; however, I will take a vote of the Senate upon it.

Mr. Manager Grosvenor—If that is the opinion of the President, we withdraw the objection. It was only upon the ground that they claimed it as an impeaching question.

By Mr. McGowan—I then repeat the question:

Q. Did you not, two or three months previous to the 22d day of March, 1872, at your store in this city, offer Merritt Lewis money to find out whatever he could against Mr. Edmonds, and come and tell you.

A. I can swear positively, sir, that I did not.

Q. Second: Did you not at the same time and place, in conversation with Merritt Lewis, tell him that he (Lewis) would be a witness in the case, if there should be a trial, and instruct him how you wanted him to swear?

A. I never instructed how to swear, sir, in regard to anything. I told him he would probably be a witness.

Q. Did you not, at the same time and place, offer to provide for him (Lewis) in case he was dismissed from the Commissioner's office, or words to that effect?

Hosted by Google

A. I told him that probably—that if he was called upon as a witness—would probably be dismissed. I told him to swear to the truth, the whole truth, and nothing but the truth, whether he went out of the office or remained there, and that he could be provided for, in some way, whatever he knew about it.

Q. Did you at that time ask him to watch Commissioner Edmonds, and if he saw anything that could be used against him to come and tell you?

A. Never.

Q. Or words to that effect?

A. Nor words to that effect.

Q. Did you not, at the time and place before stated, tell said Merritt Lewis to write to Judge Harlan at Grand Rapids that you were coming up as a candidate for the Commissioner's office and wanted him (Harlan) to assist you, or words to that effect?

A. Never.

Q. Did you not, at the same time and place, tell him, if Edmonds was put upon trial or examination, he (Lewis) would be a witness, and you wanted him to swear as strong against the Commissioner as he dared to, or words to that effect?

A. Nothing of that kind, sir.

Q. Nothing of that kind?

A. No, sir.

Q. Did you not, at the same time and place, tell the said Merritt Lewis that you would give five dollars to know if Edmonds had been drinking since he took possession of the office, meaning the Land Office.

A. I do not know that I did, and I do not know but I did. I am not positive whether I did or not.

Q. Give us your best recollection.

A. I think not, sir.

Q. You think that you did not tell him any such thing?

A. I think I did not.

Q. Nor words to that effect?

Hosted by Google

A. I think not, sir. I am quite positive I did not.

Q. Mr. Porter, have you taken considerable interest in this prosecution?

A. The interest that I naturally would, sir, under the circumstances.

Q. Please answer the question.

A. I have answered it as straight as I knew. I have taken this interest in it: I have been made one of the parties, it seems, in the case.

Q. Mr. Porter, haven't you taken considerable interest in the prosecution of this case?

A. I have, of course.

Q. Have you ever furnished, or offered to furnish, any one moneys to secure evidence, and help to carry on the prosecution of this case?

A. Only in regard to the paper, sir.

Q. I refer, now, to the prosecution of the impeachment case.

A. I never have.

Q. Have you employed, or attempted to employ, any one without furnishing them money, or by other promises?

A. Never.

Mr. Manager Cochrane—I suppose the counsel has no reference to the Managers, in this case?

Mr. McGowan—No, sir, not at all.

Q. Let me call your attention to the conversation which you mentioned in your examination yesterday, that took place with Mr. Edmonds, after you left the office, concerning this post-office order.

A. Yes, sir.

Q. I think you have stated already what words were used on both sides?

A. Perhaps things were said on both sides that should not have been used.

Mr. Manager Huston—How is that? I did not understand.

Witness—I said, perhaps, words were used by both of us that ought not to have been used at that time.

Hosted by Google

Q. Did you not in that conversation threaten Mr. Edmonds with expulsion from his office?

A. I don't know that I said so. I might have said so; I am not positive.

Q. Didn't you, then and there, in the presence of Mr. Barnard, Mr. Robinson, and Mr. Edmonds, tell him that when the Legislature met, that he would be ousted from his office, or words to that effect?

A. I could not possibly have said the thing as pointed as that, it seems to me.

Q. Well, how pointed did you state it, if you did?

A. I may have said so in an indirect sort of a way. I may have said it. I am not positive in regard to what was said. We had a conversation that was a little spirited for some time between both of us.

Q. Didn't you tell him that, when the Legislature met, there would be an investigation into the affairs of his office and his private affairs, and that he would be cleaned out, or words to that effect?

A. I could not say that it was at that time I had a conversation with him there,—at that time, or subsequent to that, in which I probably told him that. I don't know that I did. I may have told him so; and I may not,—I cannot state the words.

Q. If it was at a subsequent conversation, was it previous to the meeting of the Legislature?

A. Yes.

Q. [Showing witness a paper.] Mr. Witness, will you please look upon that paper and state whether you wrote it or not?

A. Well, sir, I can swear positive, I did not.

Mr. Manager Huston—Will you let me see it?

Mr. McGowan—Oh! he swears positive that he did not write it.

Q. Do you know who did write it?

A. I do not.

Hosted by Google

Q. Did you cause anybody to write it?

A. I did not.

Q. Give any directions concerning it?

A. Never saw it, sir, until now, and never heard of it directly or indirectly.

Mr. McGowan—That is all.

Witness—I do not know the contents of it. I did not look at it; but I know it is not my writing.

Mr. Manager Huston—Are you sure?

Mr. McGowan—That is all.

RE-EXAMINATION OF E. H. PORTER.

Re-examined by Mr. Huston.

Question—Have you any means now of ascertaining in what cases money was used, sent for lands, and scrip used in the purchase of it, during Mr. Edmonds' administration. Was there any record kept by which you can tell?

Answer—There never was any record kept.

Q. No book.

A. No, sir.

Q. Was there any book in which you kept any account during Mr. Edmonds' administration, of the moneys received, in which you entered the money?

A. None.

Q. These moneys that you speak of, in the safe,—was that money in the custody of the State?

A. It was in the custody of the Commissioner of the Land Office.

Q. What safe was it kept in?

A. The safe in the front room of the Land Office.

Q. To what office did the safe belong?

A. Belonged to the Land Office.

Q. Whose property was it,—Mr. Edmonds' private safe, or was it the State's?

A. No, sir. I presume it belongs to the State.

Hosted by Google

Q. Those envelopes were numbered, were they?

A. All of them.

Q. That the money was kept in?

A. Yes, sir.

Q. Now I see No. 39 is, Four hundred dollars. Was there that amount in that?

A. I presume so.

Q. Do you remember who that four hundred dollars belonged to?

A. I do not.

Q. How long had it been there?

A. I can't tell now.

Q. Was there, during the time that you was in Mr. Edmond's office, or in the office there under Mr. Edmonds, any effort made to ascertain to whom this eleven hundred and eighteen dollars belonged?

A. Well, I have made efforts very frequently in writing to parties, and in many instances we found out where it belonged, and returned it. But in most instances we did not.

Q. You can't tell how long this four hundred dollars had been there?

A. I don't remember, now, what it was, or whose it was.

Q. You can't tell, now, the length of time that these different amounts had been in the safe?

A. No. Much of it had been there for years back.

Q. Did any of this money that was in the safe, accumulate while you was there?

A. I presume it did, sir.

Q. Some of it accumulated while you were there?

A. Yes, sir.

Q. Any of it while Mr. Edmonds was there?

A. Well, quite likely. I could not say regarding that. I should presume there might have been some.

Q. The counsel for the respondent asked you in regard to reserving lands. Now I want to ask you what the practice

Hosted by Google

was, or whether there was any book in which these reserves were kept?

A. There was a book, made during the last two years, I believe,—made, perhaps, in 1869, I guess,—to enter, to make a record of the lands reserved on contracts,—Swamp lands which were getting into the books as fast as possible.

Q. Well, sir, how did you designate upon the plats,—how did you designate upon the plats of the office,—that lands were reserved?

A. On the margin was always put the initial, with the contract to which they were reserved.

Q. How?

A. Mostly in pencil.

Q. Well, did you do anything upon the description?

A. In pencil.

Q. Pencil the initial of the party's name?

A. Yes, sir.

Q. Upon the description?

A. Yes, sir.

Q. What are these plats?

A. They are blank plats of townships.

Q. They are plats of towns, bound, are they not, making a large volume bound,—all the plats bound?

A. Yes, sir.

Q. When you marked land in that way, the initial in pencil, and pencil upon the margin, did you also enter upon a book in the office, giving the name of the party and the description of the land, and the date that he had made his reservations?

A. We did while they were transferred from the book on to the contract book. We did where they were entered on contracts.

Q. Where they were actually entered on contracts?

A. Yes, sir, as fast as we could reach them.

Q. Was it the custom to reserve large amounts of land, by this penciling of the description, and not enter it upon this

Hosted by Google

book at all. There was no evidence in the office, except the simple penciling on the plats, that they had been reserved?

A. Yes, sir, that was the custom.

Q. Was not that the case during the time that Mr. Edmonds was in the office?

A. It has been the custom.

Q. Was n't there large amounts of land merely reserved in that way, and the only evidence was this penciling, at the time you left the office?

A. Yes, sir, I think so.

Q. Now, was n't it the practice, very frequently, to make these reservations upon the verbal order of parties that came there, without having any written application.

A. Yes, sir.

Q. So that there was no application and no evidence, except the penciling upon the plat?

A. Many times that was all.

Q. During the time that you was in the office, did you have any knowledge of Mr. Edmonds' purchasing any State lands?

A. Not personally purchasing any land. I have no knowledge of it.

Q. Let me call your attention to a piece down in Monroe county. What do you know about that?

A. Mr. Edmonds applied for a piece of land, 40 acres I think it was, for some party down in the southern part of the State. Whether it was Monroe or Branch I could not tell.

Q. How did he pay for it?

A. My recollections are that he purchased scrip, and paid me the money for scrip to purchase the land.

Q. Mr. Edmonds paid you the money for scrip?

A. I think so. I am not positive.

Q. To purchase the land?

A. Yes, sir.

Q. It was since he was Commissioner?

A. Yes, sir; I am not positive in regard to that. I want it fully understood that I can't remember.

Hosted by Google

Q. Well, that is your best recollection ?

A. That is my best recollection.

Q. I want to call your attention now to the custom in the office in regard to licensed lands, and have you state what you know in regard to that?

A. Well, sir, the custom is to the extent, I believe,—any man in the State is entitled to forty or eighty acres of any vacant State swamp land, on application, for a settlement.

Q. Well, sir, when they made their application, what was done in the office?

A. To give them a license.

Q. Well, sir, what license record was made?

A. Entered upon the license book.

Q. A book kept in the office for that purpose, showing the time the license was issued and the name of the licensee?

A. Yes, sir.

Q. Were there any other cases in which licenses were issued to actual settlers ?

A. Yes, sir.

Q. Large numbers of them?

A. Yes, sir.

Q. Do you remember what the law of 1861 is in regard to the licensee filing his own affidavit and the certificate of the supervisor in regard to his having entered into possession of the land within three months after the date of his license?

A. I think the law requires, in form, that he shall make an affidavit and return to the Land Office, making an affidavit that he is in actual possession of the land, and has been three months; that he has entered upon his land within three months from the time he received his license.

Q. Well, sir, wasn't it usually the case that that was not done by settlers that entered upon the land?

A. Very often it was not done, sir.

Q. Wasn't that generally understood in the office,—that it was not done?

A. It was.

Hosted by Google

Mr. Shipman—I wish to object to the form of these questions. There is no necessity of their being so leading.

The Presiding Officer—The form of the question is certainly objectionable. The Honorable Manager will so frame his question as to avoid the objection.

Mr. Manager Huston—I will. I desire to get along with it as rapidly as possible. That is all I want to do.

Q. Will you state, now, whether Mr. Edmonds had any knowledge, and if he did, on this subject, what that knowledge was?

A. I don't know what knowledge he had on the subject, anything more than what he had gathered from the law, and from what had been said in the office. I can't tell.

Q. During the time you were in the office, if a party applied to purchase a piece of land that had been previously licensed to an actual settler, what was the practice of the office in reference to selling or not selling to the applicant?

A. Receiving an affidavit from the party applying for the land, or from two responsible parties living in the county, I think, or township, that the land had not been settled upon or was not occupied,—he had not settled upon it in three months, and if he had, he had abandoned the land. That was the usual form.

Q. Required these affidavits in all cases?

A. Yes, sir; unless it was positively known by the Commissioner that such land had been abandoned.

Q. What do you understand it to mean by "responsible,"—"the affidavit of two responsible parties?"

A. The law so words it, I think,—"two responsible parties living in the township."

Q. That is, what you refer to is the law?

A. Yes, sir; I think that is the way the law reads. I am not particularly certain how it reads.

Q. I would like to have you state, if you can, any cases, if there were any, in which licensed lands were sold during the time that you were in the office, while Mr. Edmonds was Com-

Hosted by Google

missioner, without the proof of abandonment or non-settlement.

A. I don't remember an instance.

By Mr. Manager Cochrane—Mr. Porter, these responsible parties whose affidavits were required,—were these parties to be known, or what course did you take to decide as to their responsibility, or the propriety of the affidavit? Or, did you rely upon the *jurat* simply?

A. I think the law states positively that it shall be by the supervisor or by two responsible parties living in the township; and we took their oath.

Q. I want to know how you determined it?

A. We merely determined it from the affidavit as you would any other man's name attached to an affidavit.

Q. Well, then, if the affidavit recited that the parties *did* reside in the town, you took that to be the fact?

A. Yes, sir.

Q. And that they were responsible?

A. Yes, sir.

Mr. Manager Grosvenor—If I may be permitted to take the place of Mr. Huston—

The Presiding Officer—If there be no objection, Manager Grosvenor will proceed with the examination.

Mr. Manager Grosvenor—We were prohibited on the direct examination from interrogating him on any other act. We were forbidden by an arrangement in the morning, and therefore I want to call his attention back to the examination in chief.

Q. I wish you would state whether you at any time since your acquaintance with Mr. Edmonds since his official term commenced—whether you have ever seen him under the influence of intoxicating liquors; and, if so, state when and where?

A. I think I saw him once when he had been drinking; he was under the influence of liquor.

Q. Where was that?

A. At the Land Office.

Hosted by Google

Q. In his office?

A. Yes, sir.

Q. Business hours of the day?

A. Yes, sir.

Q. About what time was that?

A. It was in the afternoon sometime.

Q. Well, about what time in the year,—what month and day, as near as you can fix it?

A. Well, sir, it was in April or May,—I can't say which month now.

Q. Have you observed his conduct since that, so as to be able to give an opinion?

A. I have never examined his conduct, or looked after him in any way. Never have seen him under the influence since that, to my recollection.

Q. At that time was there anything in his language and conduct that would indicate that he had been drinking too much—

Mr. Shipman [interrupting]—Let him state the language, Mr. Grosvenor.

Mr. Manager Grosvenor [continuing]—And if so, state what it was,—whether there was anything profane or obscene, or anything of that character.

A. His language was profane and very decided, and not unlike—

Mr. Shipman [interrupting]—We object to the answer.

The Presiding Officer—The witness will state what was said, not his conclusion as to what was said. He will state the best of his recollection.

By Mr. Manager Grosvenor:

Q. Use the language that he used, as near as you can remember, or else state the substance.

A. His language was these words, as near as I can recollect: "That, by Jesus Christ, he was Commissioner of the State Land Office, and not General Pritchard."

Q. On any other occasions except that time that you speak

Hosted by Google

of, was he guilty of similar language and conduct? If so, state what?

Mr. Shipman—One moment. We object. The witness only states one occasion; we object to the language used on any other occasion than that. I suppose the object is to show intemperance.

Mr. Manager Grosvenor—Yes, sir. The object is further than that. I would like to know what his general habits and demeanor in the office were, that we may conclude the more readily that this—what we shall claim, boisterous and profane language—was from the excitement of liquor. We want to show now what his general habits were in the office.

Mr. Shipman—We will withdraw the objection.

The Presiding Officer—The objection is withdrawn.

Q. State, then, whether you have heard him use profane and loud language before that, of the same character or offense?

A. No, sir; I never did. I have heard him use an oath frequently, but never in a boisterous way.

Q. What do you mean by using an oath frequently?

A. Well, in his manner of conversation.

Q. That is his common manner?

A. He has done it in his talk frequently,—the manner of conversation with me; I don't know whether with others or not, but with myself, I have.

Q. At the time that you speak of, when he declared himself Commissioner of the Land Office, was there anything in the tone and the manner unnatural, to lead you to conclude that he was intoxicated? If so, just tell me all about it, so that we can understand.

A. His manner was unnatural from what he had been before.

Mr. Shipman—We should prefer to have him state what the facts were.

The Presiding Officer [to the witness]—State the facts.

Hosted by Google

A. The facts were these: I was talking with regard to some special ruling in the office,—in regard, I think, to moneys that should be back on payment of interest on any particular account that was in the office,—what amount should be back in regard to advertising, was the way the conversation came.

Q. Well, now, what did he say,—the manner, describe it if you have the power of description, so that we can understand how it was?

A. We had a particular form of doing—

Q. [Interrupting]—No. I want the language and the manner, the words and his manner at the time, so that we can understand it.

A. Well, sir, I tried, I believe, to give him the idea of the work in the office.

Mr. Shipman—Will you please to state what remark—the conversation that occurred?

The Presiding Officer—State the language.

Q. I want the language used, without any action or anything else; the language that the respondent used, and his manner of using it, if you have the power of description so that you can make us understand it as you understood it then, and as you saw it.

A. Well, sir, he said it in a manner that would be very decided, that "By Jesus Christ, he was the Commissioner of the State Land Office, and not General Pritchard," and wanted me to understand that that was his rule.

Q. Did he say that in a whisper?

A. He said it a good deal louder than I do.

Q. Did he say it in an earnest, emphatic manner?

A. I thought so.

Q. Indicate any unusual excitement?

A. I took it to be so.

Q. Was there anything about his countenance that indicated a flush of excitement, caused by any unnatural or artificial thing?

Hosted by Google

A. I would not swear as to that, sir; I could not say anything more than anger; I thought he was somewhat angry, and I could smell his breath,—certainly from liquor.

Q. You could smell his breath?

A. Yes, sir; I sat right by him.

Q. You knew he had been drinking, then?

A. I was satisfied he had been drinking.

Mr. Manager Grosvenor—There is one of these papers filed here, and this is similar. I will let the witness look at this for the purpose of leaving that on the file; this is supposed to be a copy of the same edition.

[Paper handed to witness.]

Q. You have been asked on your cross-examination somewhat in regard to your feeling or interest and bias in this case, and the interest that you have taken. I want you to state, on looking at that paper, whether you had ever seen the paper before?

A. I have, I think.

Q. State whether the paper had any connection with your feelings, or bias, or prejudice, that caused you to take an active part in this case?

A. It was that and that alone. It was that paper and that alone.

Q. From the reading of that paper did you consider yourself the person indicated there as "John Gray?"

A. I so take it.

Mr. Shipman—One moment. I suppose that that question is not the one before the Senate. The question was simply asked as to the character of the paper. We do not care what he does or does not consider himself. Whether he considered himself as the party mentioned there, or not, is quite immaterial here.

Mr. Manager Grosvenor—The proposition, to my mind, is very evident that we are entitled to the testimony, as to the cause of his interest and bias in this case. And if that paper was the cause,—if he deemed himself to have been the party

Hosted by Google

indicated there, as one standing in a doubtful position, we are entitled to know it.

Mr. Shipman—I won't object to that extract, if it is for that purpose.

Mr. Manager Grosvenor—While I am up I will ask to have the ruling of the Chair upon another point, whether all matters in which the respondent travels out of a legitimate cross-examination whether it is not the right of the Managers to cross-examine upon that matter, as in this case they have traveled out of a cross-examination and been making testimony, making testimony to support their defense. Had they been kept to a rigid cross-examination, very much of this testimony would have been kept out and they would have been compelled to call the witness, then. The wholesome rule of cross examination, which is a privilege I highly prize in the profession,—no one can understand that better than members of the profession,—gives the benefit of leading questions. Oftentimes a witness upon the stand has not the power of description, he has not the power of language to convey his thoughts, and they may be better got out sometimes by direct examination. Now, may I ply this witness with leading questions upon matters alone which they have interrogated him outside of the legitimate cross-examination? I would like to have a ruling of the Chair upon that question.

The Presiding Officer—The Chair will make no general bargain with counsel, but will pass upon questions as they rise and objections are made.

Mr. Manager Grosvenor—I would like to use the privilege here on this witness. I would like to ask a question in a moment. I will continue the examination upon this paper, inasmuch as Mr. Porter has that. [To the witness]—You believed yourself as the party indicated in that, as "John Gray," did you?

A. I did.

Q. I believe you stated that that was the sole cause of the interest that you took in this case?

Hosted by Google

A. Yes, sir; solely, and nothing else.

Q. Now, I will ask you whether the acts which you did to discover the author of that, had any reference to this prosecution, or was it for another purpose?

A. I had no thought, sir, of anything of this prosecution at all; no knowledge of it whatever.

Q. To what did your investigation point?

A. A private investigation of the matter, of my own.

Q. Well, now, had you any reason to believe that Commissioner Edmonds was the author of that paper?

A. I had, in my own mind, sir, a good reason.

Q. What were the reasons?

Mr. Shipman—One moment. We object.

Mr. Manager Grosvenor—I ask what his reasons were.

Mr. Shipman—We object to his reasons. His knowledge we do not object to.

The Presiding Officer—Do the counsel wish to say anything upon the objection?

Mr. Manager Cochrane—I wish to make these remarks, Mr. President: The counsel for the respondent have put in evidence, although they have not, as yet, asked direct questions,—but they have put in evidence upon which they claim to show that a feeling which existed between Mr. Edmonds and the witness here was a feeling which arose out of various rulings that Edmonds made, various conversations which they had, and finally a dismissal of the witness from office. Now, we called the witness upon the stand and asked him with regard to this paper. We asked him whether those feelings and interest which he had, and the bias which he admits, arose from the publication of this paper. He says they did. When the question immediately arises, Why would this paper produce those feelings? Now, it may be a fact, notwithstanding our testimony, that Mr. Edmonds was not the author of this paper, but it seems to me that it is competent as showing the mental operation upon which the witness acted, or mental emotions upon which he acted, to show the reasons why he

Hosted by Google

supposed that Mr. Edmonds was the author of this paper, and therefore to show why he had the ill-feelings against him. It seems to me that it had ought to go to this court the same as it would go to a jury,—as explaining the whole matter. It certainly explains the whole matter. I do not know whether the reasons are wholly based upon facts, but they must be based upon some facts, because a man does not have an opinion without some facts, and those facts are the reasons for which we ask here. The question is, What were the reasons? in other words, What are the facts that made him act? Although he may have acted bad, they might have been facts that would have acted upon one man's mind differently from what they would upon another man's mind. The question amounts really to What are the facts which induced you to think Mr. Edmonds was the author of this paper?

The Presiding Officer—It seems to me, that that should be the question,—What are the facts. If he had reasons that were not based upon the facts, the respondent could not be affected. I will take a vote of the Senate upon the question if it is desired. The objection is sustained. Let the witness state the facts.

Mr. Manager Grosvenor—I called for his reasons, and then I expected, of course, in those reasons he would state the facts; I did not expect that he would state anything else, or that he could in the nature of the case state anything else but facts. The reasons he would give would naturally be facts, if it was from any consideration with him that he came to the conclusion. "State your reasons." What are reasons? "They are facts upon which he came to the conclusion I did." What are they? "I had a conversation with Mr. Edmonds; in that conversation" this occurred, or that occurred, or whatever it was. I don't know what the facts are, but the facts were the reasons which we want to draw out.

The Presiding Officer—The witness may state the facts.

Q. State the facts. State the grounds,—I don't know as

Hosted by Google

there are any other words you can use there. State the facts upon which you believed Mr. Edmonds to be the author.

Mr. Shipman—We object to the question. The question should be confined to this: "Have you any knowledge? What knowledge have you?" then, "If you have knowledge, state what." First, it must appear that he has knowledge; and, second, he may state what that knowledge is. But this is under cover, really, to get in what reasons he had for believing Mr. Edmonds to be responsible. We object to it.

The Presiding Officer—From the statement of the Honorable Manager, I supposed that to be in reality what he wanted. The witness, though, may state his knowledge in regard to it.

Q. Will you go on and answer the question?

A. Well, sir, my knowledge, at least my reasons, are these—

Mr. Shipman—Wait a moment. The question is one of knowledge under the decision.

The Presiding Officer—The witness has been sufficiently instructed that he must state the knowledge, the facts.

Witness—My knowledge is this: That it came from the Land Office, through some one, purporting to go out to the public that certain letters had been written in this city signed "John Gray."

Mr. Shipman—The witness should understand that it is his personal knowledge, not what he has been informed by others.

Witness—I am speaking of personal knowledge. Of course, when this paper came out, I could suspect no one else except the men there, from what I know had been said and done through that office.

Mr. Shipman—One moment. That is the reason. We want personal knowledge.

The Presiding Officer—The witness will not state any private reasons of his own, but state his own knowledge.

Mr. Manager Cochrane—It seems to me that the rule here, from which we ask that this question should be answered,—the principle upon which we ask it,—is not fully understood by the counsel for the responent. Let me illustrate. Supposing

Hosted by Google

a man is charged with murder, and his counsel attempt to palliate that murder, perhaps to justify it. Supposing the party can prove,—if it were competent to put him upon the stand,—should prove that it was a common reputation; that he heard it in society generally; that he heard it everywhere, that the party murdered had had criminal intercourse with his own wife. Now, he might not be acquainted, personally, with a single one of those facts, and yet I think that any lawyer would submit to the court, and insist, that a common reputation with regard to that matter might be some justification; it might palliate the crime, although he might not be acquainted with one single fact any further than a common reputation,—any further than the observation of society generally, or the observation of his friends, or the observation of particular individuals in whom he might place confidence. Now, it has been sought here to show feelings of prejudice against the respondent. These feelings probably exist; we do not deny but what they exist. They have shown upon the other side something which they claim accounts for this feeling, and that is the dismissal from the office. We, upon our side, seek to show that the witness here believed that the respondent was guilty of the publication and the circulation of this newspaper. He may not know one single fact, but society may, or those who, perhaps, are entitled to know.

The Presiding Officer—I will ask one question, right here. Is this evidence sought of the witness now for that purpose, or is it in support of Articles VIII, and IX ?

Mr. Manager Cochrane—I suppose it is sought for the purpose of simply showing his feelings.

Mr. Manager Grosvenor—That is all.

The Presiding Officer—Is it not sufficient, that the witness himself states that the reason of his action was based upon the paper ?

Mr. Shipman—We insist that he is not required to prove that. If he states it, that is sufficient.

Hosted by Google

Mr. Manager Cochrane—Well, we were prohibited from asking the reasons why he believed it. We thought it was proper to go to this Court.

The Presiding Officer—Let me ask the Honorable Manager if it is necessary, as long as the witness has stated that it is so? What his private reasons may be is one thing.

Mr. Manager Cochrane—I think it is proper to go to the Court to show the entire ground. We propose to show that he was justified in his own mind. Perhaps he would be justified in the eyes of this Court in having these feelings. It is simply to show that he believed that this man was the author of this paper. The Court might say: "What reason have you to believe that he was the person, without explaining the reason?" We want to show that he was justified in this so far as those reasons go, no matter whether it comes from hearsay, or whether it comes from the knowledge that this man published the paper.

The Presiding Officer—I do not understand that there is any question pending.

Q. [Showing witness book.] This book that you have been interrogated about, I want to ask a few questions about that. Was this book first commenced at that time, or at the time it bears date,—April, 1871,—the 15th of April, 1871?

A. I think that is the first account, sir, that was kept. I didn't know what it was.

Q. At that time you seem to have entered an amount of one hundred and twelve dollars on hand, and that commences on the 15th day of April. That was the commencement, was it?

A. Yes, sir?

Q. After that was everything entered in that book that you had knowledge of?

A. Yes, sir.

Q. At the time of the transaction?

A. Yes, sir.

Hosted by Google

Q. Was that continued so along, as far as your knowledge extends, a true and correct record of the transactions within your knowledge then?

A. It does, I believe.

Q. I see in May, another handwriting. You stated whose it was. May 31st,—is that Mr. Barnard's handwriting?

[Book shown witness.]

A. Yes, sir, I think it is.

Q. Was that the end of your term?

A. The last. I left the office the first of June.

Q. You turned this money over?

A. It was all deposited.

Q. Have you turned this money over to the office?

A. Yes, sir.

Q. I see no entry upon that book showing it to be turned over.

A. Not turned over; it was deposited, as balanced up there, at the end of every month.

Q. Where?

A. At the State Treasurer's Office.

Q. Yes, but the book don't show it; it shows $309,—just explain that. In other cases there, you indicate at the end of the month, that it has been deposited. That, I see now, commences at the close of your term?

A. Yes, sir.

Q. Was that money deposited?

A. It was. Let me see what that date would be.

Q. The 31st of May.

A. It was deposited.

Q. Why wasn't it marked on the book, then, that it was deposited?

A. There don't seem to be any such entry on the book.

Mr. Shipman—Deposited where?

Mr. Manager Grosvenor—In the office of the State Treasurer.

Hosted by Google

The witness—There is also a receipt taken and filed for the deposit.

Mr. Shipman—I did n't know what you meant by "deposited."

Mr. Manager Grosvenor—What I mean is this: At the end of April, it seems,—April 29,—there seems to be deposited in the State Treasury $473. You will find that continued until the last entry, when he left the office, and this book would show in his hands $309 when he left, back, unexplained. That is why I asked him.

The witness—It was deposited, which, I presume, the receipt will show, in the hands of the State Land Office.

Mr. Shipman—If there is any question about it, I will send an officer for the papers.

Mr. Manager Grosvenor—No; there is none, if you do not claim that the money is in his hands.

(To the witness)—Now that was not the money about which you and Captain Edmonds differed?

A. No, sir.

Q. It was the profits in "scrip" trade?

A. Yes, sir.

Q. Why did you not pay over the profits of the last month or two you were there?

Mr. Shipman—We object to that. We did not go into it. The case before the Senate is not Porter against Edmonds, nor Edmonds against Porter; it is the State against the Commissioner of the Land Office; and do not let us go into that issue only to see whether one was right or the other was right. The only question proper and becoming upon the testimony of the witness is whether he has any bias; whether he has got it rightfully or wrongfully is quite immaterial. We simply showed that there was a dispute, that is all; we did not go into it, and we do not wish to try the issue.

Mr. Manager Grosvenor—We do, Mr. President. We want to try that very issue. We want to know the cause, for there was the very point where the people began to get light; and

Hosted by Google

we want to know exactly what the arrangement was between the respondent and this clerk, even before the respondent was elected. We want to know whether there was a bargain going as far back as that; whether the Commissioner violated that bargain in turning this man away, which was the cause of his not paying, and which was the cause of our knowing what we may know in the case. That is what we want to know.

Mr. Shipman—If that is the ground, we won't object. You may try anything that you want to try.

The Presiding Officer—The objection is withdrawn, but I certainly hope we shall not try the case of Porter against Edmonds or of Edmonds against Porter.

Mr. Manager Grosvenor—No. But upon the cross-examination—

The Presiding Officer [interrupting]—The objection is withdrawn. The counsel may proceed.

Mr. Manager Grosvenor—I ask, upon the part of the Managers, as a personal privilege, to make an explanation.

The Presiding Officer—The counsel may make an explanation.

Mr. Manager Grosvenor—We ask it, that we may know just how we stand. We do not take any part in this personal fight, only so far as it leads to matters connected with the public interests, but so far as that we ask permission to bring it all to the light, if it indicates the motive, the *animus*, with which one has been actuated or the other, to develop this matter. Now, I have no stock in either of these men. I do not know that the People have,—as to their personal quarrel, I mean; and I believe that the Managers have no such feeling. I do not wish to have Senators understand that we are defending this man; only, he is now the People's witness on the stand, and it is our duty to see that he be not unfairly stultified here. If there is a reason which operated in his mind for withholding that money—in his judgment—on a contract, or an arrangement between him and Edmonds,—if he felt justified in withholding that money because Edmonds had

Hosted by Google

not performed his agreement,—then we would like to have the whole of it; because the indication would be here,—in fact they shadow it forth already,—that in consequence of some corrupt conduct on the part of this man, he was turned out of office by the respondent, whereas we want to show that that might have had something to do with it, but it is only dragged up here as an excuse; and whereas, as a part defense, we want to show that it went deeper, it had reference to something more. That is the only explanation I desire to make. [To the witness.] Now, I will ask you to state fully and candidly the reason you did not pay the money over for the last two months,—the profits on the scrip trade?

Mr. Shipman—Mr. President, I will renew the objection, because it opens an issue here that we do not expect to try. This has nothing to do with the case. I was inclined to withdraw the objection after this general statement that had been made by the Managers that it might leave a bad impression upon the Senate; but this is an immaterial issue here altogether, and I object simply as a friend of the respondent. The fact is all; the bias is apparent;—he owns it, and that is enough. Now, I would suggest one thing, Mr. President, that any transaction between the Commissioner and the State we will not object to showing;—that he did not do properly by the State; but this is a transaction between the witness and Mr. Edmonds. Whether Mr. Edmonds was wrong or Mr. Porter was wrong is immaterial in this issue. It is not charged in the articles;—it in no way bears upon the case.

The Presiding Officer—I will take a vote of the Senate if it is desired.

Mr. McGowan—Will the Secretary read article fifth of the impeachment, so that we may understand the issue?

The Secretary here read the fifth of the articles of impeachment.

The Presiding Officer—Senators, the question is, Shall the question proposed by Mr. Manager Grosvenor be put to the witness?

Hosted by Google

Mr. Briggs—I ask for the reading of the last question.

The Presiding Officer—The reporter will read the last question put to the witness.

Question read.

Mr. Waterbury—I would like to have the Senate Chamber cleared that we may talk over this matter. I make that motion;

Which motion prevailed.

The Senate chamber was then cleared at 11:27, and the doors were again opened at 11:55.

The Presiding Officer—Gentlemen Managers on the part of the impeachment, and counsel for the respondent: The question stands, yeas 17, and nays 9; so the Senate decide that the question shall be put to the witness.

Mr. Romeyn—I will call attention to the order adopted this morning in regard to adjourning at 12 o'clock.

The Presiding Officer—Does the Senator move to adjourn?

Mr. Moffatt here made an inquiry as to the cause of delay in printing the proceedings.

Mr. Wheeler moved that a committee of three be appointed by the Chair, to confer with the State Printer, relative to the cause of delay in the printing of the "Impeachment Proceedings;

Which motion prevailed.

The Presiding Officer appointed as such committee Senators Wheeler, Moffatt, and Waterbury.

Mr. Romeyn—Now, Mr. President, if it is necessary to make a motion for a recess, I will make that motion.

The motion prevailed, and the Senate, sitting as a Court of Impeachment, took a recess until two o'clock P. M.

—

Friday P. M., May 3, 1872.

The Senate was called to order by the President *pro tem.* at two o'clock.

The Secretary called the roll, and the Presiding Officer announced a quorum present.

Hosted by Google

Absent—Senators Mann and Putnam.

The Prosiding Officer—When the Senate took a recess, a question had been asked by the counsel and objection made, and the Senate had allowed the question to be asked. Are the Managers ready to proceed ?

RE-EXAMINATION OF E. H. PORTER, CONTINUED.

E. H. Porter again took the stand, and the re-direct examination was continued.

Examined by Mr. Manager Grosvenor:

Q. The question was, Why did you not pay over to Mr. Edmonds the profits on the sale of scrip for the last one or two months ?

A. Shall I answer the question ?

Q. That is the order.

A. Because I did not consider that he had lived up to the terms of the contract between himself and me, or to his promise.

Q. What was that contract ?

A. The promise that he made personally to myself and friends, that I was to remain as his Deputy, before his nomination and also after it.

Q. What was the consideration of that promise, if anything ?

A. I think there was no consideration, anything more than promises that were made before.

Q. When was the agreement made ? How did he come to make the promise ?

A. He made the promises to friends before or at the time of the convention—of the State Republican convention—and also to myself in the presence of friends after his nomination.

Q. That is the time ?

A. Yes, sir.

Q. How did he come to make it ?

A. They went to him—I know they did—and talked to him.

Mr. McGowan—I understand the witness is to speak from personal knowledge.

Hosted by Google

Witness—My own personal knowledge.

Q. I ask if you know what was said?

A. I don't know all that was said at that time.

Q. Did you have any talk with him, yourself, at that time?

A. I did.

Q. What was that talk?

A. He told me, in the presence of half a dozen of my friends, he knew my standing in office, and also as a citizen, and that "so far as anything he knew," I think were the words, "he could say to me without any fear of contradiction or without any reservation in his own mind, that I should remain there as his Deputy in his office."

Q. Were you and your friends to do anything in that convention in consideration of that promise?

A. That was on the part of friends, before the nomination.

Mr. Shipman—Have we got to go back into that bargain? We object to it. We do not want to take up time. If it is within the meaning of the Senate, if required, we will submit to it.

The Presiding Officer—The objection is sustained. I will take a vote if required.

Q. Since leaving the stand have you looked that paper over?

A. I have.

Q. Will you state any facts, if you have any, that lead you to believe that Mr. Edmonds was the author of that paper?

Mr. Manager Grosvener—I believe that was the ruling, that he might state the facts.

Mr. Shipman—We object.

Mr. Manager Grosvenor—That was the ruling.

[The objection was withdrawn.]

A. Yes, sir, I have.

Q. State them as correctly as you can.

A. Here is one place, in this paper, that my attention was called to in reading it, that gave me fully to understand that he, and no one else, was the party that issued the paper. He was at my house, personally, as my guest, himself and his wife

Hosted by Google

and daughter, during the session of the Legislature, some week,—or about a week,—and no other man could know the circumstances, that is in this paper, but himself.

Q. What circumstances?

A. I will read it.

Q. State what circumstance.

Witness, [reading]—"It has been our pleasure, often to meet our erring brother,"—

Mr. Shipman—If there is any fact or circumstance bearing on this, he can state.

Q. State what occurred at your house? We will read the paper ourselves.

A. Yes, sir. My attention was called to it from the fact, that he refers to his being present at the family altar.

Q. Well, any other circumstances?

A. Another circumstance that leads me to fully believe that it emanated from that office, or from himself, was the fact that I gave, upon some half dozen importunings, my photo graph to one of his confidential clerks.

Q. Who?

A. Mr.—

Mr. McGowan—Griswold?

Witness. Yes, Mr. Griswold.

Q. Any other circumstance or fact?

A. No other circumstance or fact that I could gather from it personally.

Q. You speak of the session of the Legislature. Which session was it,—the extra session?

A. No, sir; the session of 1871.

Q. The regular session?

A. Yes, sir.

Q. While you were in the office?

A. Yes, sir.

Q. Before any difficulty between you and him?

A. Yes, sir.

Hosted by Google

Mr. McGowan—I do not understand what time is fixed by this Legislature being the regular session?

The Presiding Officer—The regular session of 1871.

Witness—It was near the close of the session that the respondent was at my house, and as a guest, for about a week, on invitation.

Q. Do you wish to explain anything further about the Kent county fees than what you have stated?

A. I would be glad to.

Q. Well, sir?

A. I would like to see the book a moment. [The witness here refers to a book.] If you will pardon me a moment I will do a little figuring, and tell you exactly. [After a short time the witness resumed.] The facts of the case were these: Kent county, I think, was ordered to be made before Mr. Edmonds came into the office. General Pritchard directed me to give a number of towns to his wife to make up, and I procured the field-note books from the office, and sent them to Allegan, and Mrs. Pritchard herself wrote up the field-notes; and when the money was received to the amount of five dollars a township for a number of towns,—I can't tell how many,—was paid to Mrs. Pritchard, and the balance of it was paid into the State Treasurer's Office.

Q. Have you any explanation that you desire to make in regard to the sixteen dollar matter?

A. Yes, sir. I wish to state in regard to the sixteen dollar matter, that it was field-notes for two towns,—I don't remember the county,—and that in closing up my account then, so I could make them as correct as I could, I was uncertain in my mind whether it had been paid, not knowing it in such a way that I was uncertain of its payment. I wrote to Smalley whether it had been paid or not. The paper came in before I went into the office,—the paper written before I went into the office, and answer returned after I went into office. The letter was written in good faith, to inquire whether the money had been paid, as I felt myself in error. I concluded I had made

Hosted by Google

an error. I did n't know certain whether it had been paid or not, and when Mr. Edmonds spoke about it, I admitted it, because I was satisfied that it had been paid.

Q. Did he say anything to you about it until the return of this letter?

A. I think not. It was an error on my part, in not making the entry. I was uncertain whether it had been paid or not.

Mr. Manager Grosvenor—That is all.

RE-CROSS-EXAMINATION OF E. H. PORTER.

Re-cross-examined by Mr. McGowan:

Question. Usually, Mr. Porter, when money was sent for the purchase of lands, wasn't it sent in letters?

Answer. Not always.

Q. Was it sometimes?

A. Sometimes.

Q. What other ways are moneys sent for lands?

A. Many times sent by express, and sometimes by postoffice order, and sometimes by draft.

Q. Draft inclosed in a letter?

A. Yes, sir, or by express often.

Q. When money was sent by draft in a letter, or in currency in a letter, what became of the letters inclosing the money?

A. They were usually filed, I think.

Q. That is the custom of the office?

A. Yes, sir.

Q. That was your method?

A. Yes, sir.

Q. When sent by express was it receipted on the express book?

A. I presume it was.

Q. When sent by postoffice order you signed the receipt at the postoffice?

A. Yes, sir.

Q. Do you mean to say, now, that there is no means by which you can tell what money was sent to purchase lands during Edmonds' administration, while you were Deputy?

Hosted by Google

A. If there is any letters on file there is.

Q. That would be one means,—the express-book would be another.

A. That would not show.

Q. When money came by express, was n't there usually letters of direction describing the land?

A. Most generally.

Q. Was n't there always? How could you tell without?

A. Sometimes the letter came in advance of the money.

Q. A letter reached the office?

A. Yes, sir.

Q. And was filed?

A. Yes, sir.

Q. When postoffice orders were sent, were there no instructions? Was n't there instructions with the letter?

A. Yes, sir.

Q. And referring to the order in the letter?

A. Yes, sir.

Q. Did these letters take the same course?

A. Yes, sir.

Q. Filed?

A. Yes, sir.

Q. The letters are carefully kept in the office and bound?

A. Yes, sir.

Q. Do you still say there is no means, excepting the letters in which currency was sent, to ascertain?

A. It might be handed in personally; it is frequently the case it is done.

Q. Have you any recollection of any money being retained—what might now be designated "envelope money"—during Edmonds' administration?

A. I am not positive as to any one.

Q. When Mr. Edmonds receipted that money to Mr. Pritchard, were there not just thirty-nine entries?

A. I can't tell.

Q. Have you any recollection how this statement of yours

Hosted by Google

compares with the receipt given by Mr. Edmonds in the number of the envelopes?

A. I can't tell.

Q. Are not the numbers exactly the same?

A. I don't know.

Q. Have you any recollection concerning it?

A. I have not, as to the amount.

Q. Who drew up the receipt that was signed by Edmonds, for these packages, to Mr. Pritchard?

A. I don't know whether I drew it, or General Pritchard drew it, or Mr. Edmonds drew it,--I can't say.

Q. In regard to the funds in these envelopes, were they not funds sent to the Commissioner and not to the State?

A. They were.

Q. You spoke in your examination, in answer to the question by the Managers, that there was partial reservation of lands. Will you please explain?

A. Well, sir, it was, perhaps, oftener the case, when parties came into the office and asked for reservations, personally.

Q. Without making any written application?

A. Yes, sir, without making any written application.

Q. Was that done in cases when the parties applying had no credit?

A. It was not usually done.

Q. Was it done at all?

A. I can't say positive that it was; it is my best belief that it was not, for we always file the application. It was usual to make the application in writing, even if they were favorable.

Q. Then if there were not favorable applications made, it was where the party had a credit with the office?

A. It was, unless money was immediately deposited for school lands.

Q. Was the reserve book kept up?

A. Yes, as close as it could be. We had spent two years in trying to keep it up. It was not caught up one year.

Q. It was some time behind?

Hosted by Google

A. Yes, sir; it was a new feature in keeping the account.

Q. Was'nt it a fact that that book was behind when Mr. Edmonds came into the office?

A. Yes, sir, I think it was.

Q. And a good deal behind?

A. Necessarily, for we had n't completed the old account yet.

Q. You had n't brought it up?

A. Not fully.

Q. Is that the reason why the plats are not marked on this book?

A. That would be the explanation in regard to many of them.

Q. Do you know the name of the party from Monroe county, in whose name the land was entered?

A. I would not remember if I should hear it.

Q. When did Edmonds make that application?

A. Some time after he came into the office,—I can't say whether in January, Febuary, or in March. It was before I left the office.

Q. Was n't the entry made in the name of Luke Joseph?

A. I cannot swear positive. I don't know.

Q. Was it State lands.

A. Yes, sir.

Q. Property for sale?

A. Yes, sir.

Q. Paid for it in scrip?

A. Yes, sir.

Q. Was there any reason why the land should not be sold to a proper party?

A. None that I know of.

Q. Now, are you sure it was in Monroe county?

A. I am not.

Q. Do you remember the circumstance, that you asked Mr. Edmonds, at the time he made the application for that land, whether he should enter it with your scrip or not; whether it

Hosted by Google

should be entered with your scrip and charged against your account?

A. I kind o' think I did.

Q. Now was n't that land in Manistee county?

A. I can't say where it was.

Q. Might it not have been?

A. It might have been.

Q. Did n't that party live in Branch county?

A. I don't know where he lived. He came to me personally and asked me to have it made up, and to my recollection, furnished me money to pay for the scrip.

Q. Was there a patent issued to the man?

A. There was.

Q. Did Edmonds make application for more than one piece of land?

A. No, sir.

Q. The patent was issued in the name of the man he gave you at the time he made the application?

A. Yes, sir.

Q. Now, will you state what the practice is when parties apply for this licensed land,—this land that appeared on the books as licensed land?

A. In regard to what?

Q. First let me ask you this question: What proof did you require, previous to Mr. Edmonds' administration, of abandonment by parties applying for licensed land?

A. Required, I think, the proof of the one applying for the land, of two responsible persons certified to by the supervisor, or the supervisor himself.

Q. You required the affidavit of the party applying, I understand you?

A. It was usual, under General Pritchard's administration, to require the affidavit of the person applying for the land. That was taken as sufficient evidence; or of two responsible persons residing in the neighborhood, or the affidavit of the Supervisor.

Hosted by Google

Q. Did you have a set of blanks for that kind of proof?

A. Yes, sir.

Q. Were they uniform during Pritchard's administration?

A. Yes, sir.

Q. On these blanks was there any direction as to the execution of them, and who should execute them?

A. Not that I remember of.

Q. Will you look on that affidavit [handing the same to the witness] and please state to the Court whether that is the form of proof required, during Pritchard's administration, for abandonment?

A. Yes, sir, I think it was.

Q. Did you swear the party to that affidavit.

A. Yes, sir.

Q. Will you state whether there was any instruction on that paper for proof,—whether there was any instruction on that form, or blank, to the applicant for making proof,—how the proof should be made. Isn't there a foot-note there?

A. Yes, sir.

Q. What are the instructions?

A. My instructions were—

Q. What are the instructions?

A. Application made by the supervisor of the township, or by a party applying for the lands.

Q. Now, wasn't it the invariable practice that you only require the affidavit of the applicant?

A. No, sir.

Q. You accepted such affidavit as proof of abandonment?

A. Yes, sir.

Q. Was there any law allowing you to do so?

A. That was an occasion of the Commissioner taking the responsibility.

Q. Answer my question?

A. I don't know how the law itself reads; in regard to that I am not posted.

Hosted by Google

Q. State whether there was any change made after Edmonds came into the office, concerning that proof of abandonment.

A. There was.

Q. What was the change?

A. I cannot give it to you in the words.

Q. Was there any change made in the form of the blank?

A. There was.

Q. What was that change?

A. That I cannot give to you.

Q. When was it made?

A. I cannot say when.

Q. About how long had he been in office?

A. I should think two or three months.

Q. Look upon that paper [handing witness a paper]. Please state to the Court if that is the form of the blank that was prescribed by Edmonds in lieu of the one you have already spoken of.

A. I cannot swear as to that. I presume that is the one,—I don't know.

Q. You do not know whether that is the form used by Edmonds or not?

A. My opinion is that it was, but I cannot say.

Q. You would not be any more positive than that?

A. I think that is the form, but I cannot swear.

Q. I noticed by the first affidavit which we presented to you, that you swore the party signing the affidavit, as Deputy Commissioner. Had you any such power?

A. I suppose that I had.

Q. Where did you get it?

A. My orders were to do it for the Commissioner, as Deputy Commissioner.

Mr. McGowan—These affidavits we propose to produce in evidence. They have been identified. If the Managers have no objections, we will introduce them and let them be marked with the case, which will be sufficient.

Hosted by Google

Mr. Manager Grosvenor—Will you state the object?

Mr. McGowan—Yes, sir. To show that the practice which prevailed in the office previous to Mr. Edmonds' administration, was to admit proof of his abandonment, which was not provided for by law; and he changed it so as to require such proof of abandonment as the law required.

The Presiding Officer—Is there objection on the part of the Managers?

Mr. Manager Grosvenor—I cannot see the relevancy of the papers. Supposing he has improved upon this form, or supposing he has not, it seems to me so irrelevant, I cannot see any bearing upon it at present. It is to show that he has improved upon the form. We are not trying Mr. Pritchard This case is not one between the old Commissioner and the new Commissioner, as to the form of doing business. There is a certain discretionary power in this office to do certain things. There is a discretion left with them. One uses the discretion one way, and the other the other. We don't make any charge against him upon this. It does not relate to the charges of impeachment. We do not wish to press it. We ask that that be marked that it may be identified. We propose to make this evidence hereafter, and reserve questions.

The Presiding Officer—The Secretary will mark them.

Q. When was the conversation in which Mr. Edmonds swore at you?

A. I can't state when it was.

Q. Can you give on or about the time.

A. It was previous to making up our reports to the different county treasurers in regard to—

Q. I don't care how you get at it. What was the time?

A. I think, probably, along in January or February,—about the last of January or first of February,—somewhere about that time.

Q. Now, was not the occasion of that conversation his order to you to pay over to the Treasurer such moneys as you receive for land?

Hosted by Google

A. No, sir.

Q. Will you state when the conversation was in which you told Mr. Edmonds that he was getting very particular, or words to that effect?

A. That was at the time, if at all, when he spoke about the Branch county matter.

Q. Now, was n't that the time he told you that *he* was Commissioner of the Land Office, and not Pritchard?

A. No, sir.

Q. Did you at that time tell him that that was Mr. Pritchard's custom or method of handling those funds received from field-notes to keep them along?

A. No, sir.

Q. Did you in that conversation refer to Gen. Pritchard at all, when he told you to pay over the Branch county field-note money?

A. Possibly I did; I could not say.

Q. Was there any other time that he swore at you, and told you he was Commissioner, and not Pritchard, excepting the one you name?

A. No, sir.

Q. What time in the day was it?

A. My impression is, it was in the afternoon.

Q. Who was present?

A. I think no one but myself and the Commissioner?

Q. Was it after the clerks had left the office?

A. I think not.

Q. The clerks were in the office?

A. In the back part of the office.

Q. You and the Commissioner were in the front part?

A. I think we were.

Q. Were the doors closed between the front and back offices?

A. I can't say.

Q. You say now the clerks had not left the office?

A. I don't remember whether the clerks were there or not; I think they were, however.

Hosted by Google

Q. Now, is n't it a fact that there were three or four clerks in that front office constantly?

A. At many times there was. No, sir, there were not.

Q. Was n't there some clerks that were constantly there,—that wrote there,—had their desks there?

A. There were after a certain time. I don't know whether they were there at this time or not.

Q. You will not say that there were not one present but you two?

A. I can't say positive, but I think not; I think there was no one present but Mr. Edmonds and myself.

Q. You was talking about taxes?

A. No, sir.

Q. What was the talk?

A. As to how much balance there was on the last account, whether it should be advertised,—certain balances.

Q. You quoted Pritchard, and he swore at you?

A. I quoted Mr. Pritchard's ruling.

Q. And then he used the language that you have stated?

A. Yes, sir.

Q. How long was you engaged in that conversation?

A. I don't know, really, how long.

Q. Now, will you state what the difference was between Mr. Pritchard's ruling and Mr. Edmond's ruling?

A. The difference was this: His orders were—

Mr. McGowan [interrupting]—His? Who?

Witness—General Pritchard's orders was not to advertise the school lands or swamp lands when interest was due. When it was in small amounts, twenty-five cents or smaller amounts, we should not advertise, but carry them forward to next year's account, as it would work against the interests of parties who did n't know what it should be. Some parties sending in money fell short fifty cents and twenty-five cents. It was his orders to send it to the county treasurer and let him collect it, carrying this along, whatever it might be; and my orders

Hosted by Google

were from Commissioner Edmonds to advertise every amount, whatever they might be.

Q. What did the law require?

A. I don't know how it reads.

Q. Is there any discrimination as to a large or small amount?

A. I cannot tell how the law reads. I supposed the Commissioner used his discretion.

Q. You don't know anything about the law?

A. I do not.

Q. Do you know the act under which you were working?

A. I did at that time.

Q. Was it not in 1869?

A. I don't know.

Q. When you first commenced talking with Mr. Edmonds at that time, was he angry, or did you commence in good humor?

A. I can't say whether he was angry or not. I think we commenced in good humor.

Q. You talked some time?

A. Yes, sir.

Q. Ten or fifteen minutes?

A. Perhaps ten minutes, I can't say.

Q. Were you sitting or standing?

A. I can't say positively the position I was in.

Q. You say his face was somewhat flushed with anger?

A. I do say so. I think so now.

Q. Did he say any more than you have stated?

A. I can't say whether he did or not.

Q. Are you positive as to the words he used?

A. Yes, sir.

Q. Have you had occasion to speak of this conversation you had with Mr. Edmonds, previous to this investigation by the committee? Have you spoken of the conversation you had with him before you testified before the committee?

A. What,—with outside parties?

Hosted by Google

Q. Yes, sir.

A. I presume I have.

Q. Have you not stated, in telling the story to different parties, that Edmonds said Pritchard might go to hell? You said you have heard him use an oath frequently.

A. I have heard him use an oath frequently.

Q. Do you say he is a profane man?

A. Yes, sir, I do.

Q. What was the oath he used after this one?

A. Well, sir, perhaps to say "Damn it" as an oath, and "By God" as an oath.

Q. Was he in the habit of using such words in the office as a habit?

A. Perhaps not as a habit, but occasionally.

Q. On the contrary, is n't he a rather reticent man,—a man of few words?

A. I should not call him so.

Q. Would you call him talkative?

A. Yes, sir.

Q. In that conversation in which he swore at you, was that loud or boisterous?

A. He used a good deal of force and effect?

Q. Didn't you say he was not loud and boisterous?

A. I did not.

Q. Did you say that the door was closed or, open?

A. I do not know.

Q. You think it was in February?

A. Before I left the office;—I cannot tell when.

Q. But you were in the office five months, were you not?

A. I was there from January until the first day of June.

Q. You were satisfied that he had been drinking, because you smelled his breath?

A. Yes, sir.

Q. Do you know whether he is a man that uses tobacco or not?

A. I have seen him using it.

Hosted by Google

Q. Did you know anything about this paper—this "Every Wednesday Night"—when you had the talk with Edmonds about the postoffice order,—the sixteen dollars?

A. I never had heard of it, or thought of it.

Q. Had you heard or did you know anything about the paper at the time you had the talk with Merritt Lewis in your store?

A. I think all the conversation I ever had with Merritt Lewis is since the paper came out.

Q. When did you first learn about the paper, or see it?

A. The thirteenth day, I think it was, of March, in the evening.

Q. The Legislature was then in session?

A. The first day of the session.

Q. When you had the talk with Merritt Lewis, did n't you talk about what might be done with Mr. Edmonds when the Legislature was in session?

A. No, sir.

Q. Did you have more than one conversation with him in your store?

A. I have had half-a-dozen conversations with him in my store.

Q. Did you, in any of these conversations, say anything about what might be done with Mr. Edmonds, or the Commissioner's office, when the Legislature met?

A. I have exposed myself pretty fully, in regard to this paper, with whoever I met.

Q. I am asking you about the conversation you had with Lewis.

A. I don't remember of saying anything about the paper of Mr. Edmonds, one way or the other.

Q. Will you please name these friends that Mr. Edmonds made the contract with to keep you as Deputy?

A. I will.

Q. Do so.

A. Mr. Stockbridge is one of them.

Hosted by Google

Q. More than one?

A. Col. Delos Phillips of Kalamazoo.

Q. Any other?

A. I think Judge Williams of Allegan.

Q. Any other?

A. I think my brother is another.

Q. James B. Porter?

A. Yes, sir.

Q. Any others?

A. Mr. Jones.

Q. N. B. Jones?

A. Yes, sir.

Q. Any one else?

A. My recollections are that the gentleman from Coldwater, whom I cannot call by name, Capt. somebody—

Q. Purinton?

A. Yes, sir.

Q. You say that these gentlemen and Mr. Edmonds made a contract, previous to his election, that you should be his Deputy?

A. He did n't make any contract but promises.

Q. Did he make a promise with these gentlemen you have named?

A. I understood he did.

Q. I understand you had personal knowledge.

A. My knowledge is what he told me. I can't tell what they said to him.

Q. Have you talked with any of these gentlemen about it since?

A. I have,—some of them since and at the time.

Q. Did you at the time talk with each of them?

A. They came to me in a body and told me what they said.

Q. The men you have named came to you in a body and told you?

A. Yes, sir, these men with others.

Hosted by Google

Q. Please state what they said when they came to you in a body?

A. They told me they had had a conversation with Mr. Edmonds in regard to his nomination; that there were friends there who had proposed to present my name before the convention in case of the throwing overboard of the old officers, and his name came up before the convention, receiving a certain number of votes. After the first ballot was taken, they went to him before I saw or knew what they were doing.

Q. They told you this?

A. Yes, sir, they told me they had this conversation with Mr. Edmonds, and then returned to me and said: "Here! are you satisfied, provided you shall be Deputy in the Office, to withdraw your name from the convention." I told them I was satisfied with anything that they saw fit to do,—I was not a candidate against the wishes of any one. They assured me they had talked with Mr. Edmonds, and that he had assured them that if he was nominated I should remain as Deputy.

Q. In that delegation that waited upon you at that time in the convention and told you this thing, were all these men you have named there?

A. They were all there.

Q. Now, when you had personally conversed with him about it, you say he told you "as far as he knew, you might remain in the office." Is that the fact?

A. That I think. I cannot tell the words he used. He said he was satisfied with what he knew of me from report. He could say to me I should remain in his office as Deputy. I was introduced to him by General Pritchard, I think.

Q. I don't care who introduced you. It was on the violation of that contract that you pocketed the profits from the scrip for the last two months?

A. I did n't pay it over.

Q. You took it yourself, did n't you?

A. I did.

Hosted by Google

Q. Was five dollars the usual price to pay for outside help in writing up a town?

A. Yes, sir; I think so.

Q. Of the amount you paid Mrs. Pritchard did you make any entry?

A. I did on my private book.

Q. On the book of the office did you?

A I did not.

Q. Whose private book did you make that entry in?

A. My own, merely as a memorandum.

Q. Is that true of all the help you had outside of the office.

A. Yes, sir.

Q. When did you pay Mrs. Pritchard that?

A. July 20th, 1871.

Q. When did you receive the pay for that work.

A. While I was in the office. I can't tell when.

Mr. McGowan—That is all, Mr. President.

The Presiding Officer—Have the Honorable Managers any other questions?

Mr. Manager Huston—No, sir.

The Presiding Officer—Call your next witness.

TESTIMONY OF D. W. ALLISON.

D. W. Allison, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Huston:

Question—Where do you reside?

Answer—Saginaw City.

Q. What is your business?

A. I have been engaged in manufacturing salt and lumber until recently, and something in the land business I have been latterly.

Q, Are you acquainted with Captain Barnard, the Deputy Commissioner?

A. I am.

Hosted by Google

Q. Are you acquainted with Mr. Edmonds?

A. Not particularly.

Q. You know Mr. Edmonds when you see him?

A. I never remember of seeing him but once before I came here this time.

Q. Have you had any transactions with the office within the last year?

A. Yes, sir.

Q. In connection with 16 and 32 north, 2 west? If so, state what it was?

A. I got a patent for 240 acres in that section.

Q. When was it you applied?

A. I applied about the first of October last?

Q. Do you remember what part of the section it was?

A. Well, I applied for more than I got.

Q. What was it that you applied for?

A. I applied—the part that I applied for, or the part that I got, was the northeast quarter of the section, and the southeast quarter of the southwest quarter, and the northeast quarter of the southwest quarter.

Q. What was it that you applied for that you did not get?

Mr. McGowan—May I get those descriptions?

Witness—The northeast quarter of the section, the southeast of the northwest, and the northeast of the southwest.

Q. Those are the descriptions?

A. Yes,—are the descriptions that I obtained patents for.

Q. Will you state what the descriptions were on that section that you applied for that you did not get?

A. The descriptions that I tried to get, but that were taken, that is that were said to be taken. I wanted to get the southwest quarter of the northwest quarter, and the west half of the southwest quarter.

Q. When was it you applied for those?

A. At the time I got the other.

Q. How long did you apply for the other before you got your

Hosted by Google

patent? Did you not write on and make an application before?

A. No, sir; I did not write on. I came down. I wrote to ask in reference to the section being vacant, and got an answer.

Q. Have you got that letter with you?

A. I have not.

Q. Did you look for it?

A. Yes, sir.

Q. Could you find it?

A. I could not.

Q. What was the answer that you got?

A. That a portion of the section was vacant.

Mr. Shipman—If there is anything in regard to the letters, I presume he will offer his copy; if you wish the letter I will try to produce it.

Mr. Manager Huston—The office copy might not be the letter that he got.

Mr. Shipman—If it is an official letter it was copied on the letter book.

Mr. Manager Huston—That is so; but still that might not be the one. I do not think you can prove it that way. I do not think a man can make up an answer for himself.

Mr. Shipman—We will waive all objection and let him answer the question.

The Presiding Officer—The witness will answer the question.

Q. Will you state, to the best of your recollection, the content of that letter?

A. The contents was, inquiring if the section or part of it had been patented or disposed of. That was my letter.

Q. I speak in regard to the letter you got in answer.

A. The letter was that a part of the section had been patented or disposed of.

Q. After getting that letter what did you do?

A. I came down to the office.

Q. What did you find when you got to the office?

Hosted by Google

A. I found all that I wanted, with the exception of three "forties."

Q. Found it how?

A. Vacant.

Q. How the rest,--forties?"

A. I found three "forties," and two other "forties," that were said to be reserved to Cyrus Hewitt.

Q. Did you see the plats.

A. Yes, sir.

Q. How was it marked?

A. I do not remember distinctly.

Q. Before the time you wrote to the office, did you have any talk with Mr. Barnard about this land?

A. Yes, sir, I did.

Q. What was the talk that you had?

Mr. Shipman—We object to that. Mr. Barnard is not on trial, and I do not know that we have anything to do with any outside conversations. I do not know where this conversation was or when it was.

Q. Was Mr. Barnard Deputy Commissioner at that time?

A. So known by the public, I think, generally. I understood it so.

Q. This was after he was appointed Deputy Commissioner, that you had this talk about this piece of land?

A. I think it was.

Mr. Manager Huston—I renew my question.

Mr. Shipman—Where was the conversation?

Witness—In the "old office," I think.

Mr. Shipman—If it was in the office we will not object.

Mr. Manager Huston—I suppose you have no ground for the objection.

Q. What was the conversation you had with Mr. Barnard about this land?

A. I had had a report of this land; I asked him if this land could be taken under quarter payments.

Q. What did he say?

Hosted by Google

A. He said that they were farming lands, and if I could either swear or get some one else to testify under oath that they were not good or valuable for timber that I could take them under quarter payments.

Q. What did you say to him?

A. I told him that I could not do it, for I did not know whether they were valuable for timber land or not.

Q. What do you know about the lands that you did not get, since the time that you applied for your patent.

A. I know that I have got them now.

Q. When did you get them?

A. I got them since I have been in town here.

Q. When did you get the last that you wanted?

A. I got them—No. I bargained for them last night.

Q. Who did you get that of?

A. A man by the name of Thomas.

Q. What Thomas? Where does he live?

A. At a place called Portland.

Q. Do you know when they were sold to Thomas, at the office?

A. My deed says, May 1st, 1872,—that is, the patent.

Q. They were patented from the State to Mr. Thomas?

A. Yes, sir.

Q. May 1st, 1872?

A. Yes, sir.

Q. The same lands that you applied for last October?

A. Yes, sir.

Q. Do you know whether Thomas, for any of these lands, filed an affidavit? If you do, state what you know about it.

A. I don't. I have heard that he did.

Q. You don't know of your own knowledge?

A. I don't know.

Mr. Shipman—The files of the office are at your service.

By Mr. Manager Grosvenor:

Q. You say you purchased of Mr. Thomas,—do you of your

Hosted by Google

own knowledge know whether Mr. Thomas purchased on quarter payment or full payment?

A. On quarter payment, at first.

Q. When was his certificate made?

A. Made May 1st.

[Witness produces certificate.]

Q. Have you got the certificate there?

A. Yes, sir; made the first of May, all except forty acres.

[The certificate was here handed to counsel.]

Q. [Showing witness a paper.] Look at these descriptions and state whether they are the same descriptions that you have been testifying in regard to?

A. There are only two of these descriptions that I wanted at the time I came here to buy.

Q. There are only two of the descriptions there that you applied for?

A. Yes, sir.

Q. There are only two of them?

A. Two of them.

Q. Are you acquainted with Mr. Barnard's hand-writing?

A. [Witness looks at paper.] Yes, sir; I have been formerly.

Q. Well, would you say that that was his hand-writing?

A. Well, I should think so; but I may be mistaken.

Mr. Manager Huston [showing the paper to Mr. Shipman]—What do you say about that being Mr. Barnard's handwriting?

Mr. Shipman—There is no question about it.

Mr. McGowan—It is stamped and sealed.

By Mr. Manager Huston:

Question—You are acquainted with Cyrus Hewitt's hand-writing?

A. Yes, sir.

Q. [Showing witness a paper]—Is that his writing?

A. I should think so. That is his signature.

Q. I don't. But you saw Mr. Thomas sign this paper, did you?

A. No, sir, I did not.

Hosted by Google

Q. Are you acquainted with his writing?

A. No, sir, I am not.

Mr. Manager Huston—Mr. President: So far as the first two papers are concerned,—of this paper,—we would like to introduce them in evidence. We will prove Mr. Thomas' signature to the assignment hereafter.

The Presiding Officer—Is there any objection on the part of the counsel for the respondent?

Mr. Shipman—We have no objections. I would like to see the papers on cross-examination; that would be all.

Mr. Romeyn—It is very difficult to hear what is said.

The Presiding Officer—Counsel and witnesses will speak louder.

By Mr. Manager Hutson:

Q. You say that there was another piece that was not included in this certificate from the Commissioner that you applied for last fall?

A. Yes, sir.

Q. Have you purchased that?

A. Yes, sir.

Q. Who did you purchase that from?

A. Mr. Thomas.

Q. When was it that you purchased from Mr. Thomas?

A. Last night.

Q. Do you know when that was patented to Mr. Thomas?

A. The 1st of May, 1872.

Q. Will you state how much more you had to pay than four dollars per acre to get this land?

A. I had ninety dollars to pay on the five "forties."

Q. Ninety dollars extra?

A. Yes, sir.

Q. When did you look up these lands?

A. Well, I have had them looked several times, but never was thoroughly satisfied in regard to the class of these lands or the quality of the pine until I talked with Mr. Barnard about their being farming lands.

Hosted by Google

Q. How long is it since you had that talk with Mr. Barnard last summer?

A. Some time in the summer, between the third of June and some time in August, I think.

Q. You had them looked since?

A. Yes, sir; I ascertained their qualities since.

Q. After you had them looked, you applied?

A. After I had them looked.

Q. Did you make your application?

A. Yes, sir.

Q. You came here on the thirteenth day of April, did you not?

A. Yes, sir.

Q. Did you apply for this land on the thirtieth day of April?

A. Through an agent I applied for the "forty."

Q. Which "forty?"—Will you give description?

A. The "forty" that was patented,—the southwest quarter of the northwest quarter.

Q. Well, sir, did you get that?

A. No, sir.

Q. Why not?

A. Well, they would not give it to me.

Q. Well, do you know what reason was assigned,—of your own knowledge? If you do not know what the agent told you, I do not want you to state. Do you know, from what Mr. Barnard, or Mr. Edmonds, or any of the clerks in the office said to you?

A. I spoke to Mr. Edmonds about it. He was the only person that I spoke to about it.

Q. What did Mr. Edmonds say about it?

A. I claimed the land under two considerations: First, that Cyrus Hewitt had deposited a check of only two hundred dollars to cover these five "forties" of land—

Q. That is, these two hundred acres?

A. Yes, sir; two hundred acres,—and the check made to his

Hosted by Google

order, and the order not on the check. I claimed that it was not a negotiable check; and that as I had the money there, on the application, I was entitled to it, in preference to him, on account of the check. Secondly, I claimed to him that either the law or the custon required that when lands were taken on quarter payment, that there should be an affidavit to the effect that they would not be valuable for timber,—timbered lands,—and that that affidavit did not appear, and that consequently I claim the right to the patent for this "forty."

Q. When was that check filed? Did they say this two-hundred-dollar check?

A. The sixth of July, 1871,—purported to be.

Q. Purported to have been filed the sixth of July, 1871?

A. 1871.

Q. These lands were four dollars an acre.

The Presiding Officer—When did I understand the witness to say that that conversation occurred with Mr. Edmonds?

A. The first day of May,—just before the patent issued,—1872.

Mr. Shipman—It is since the time alleged in the articles, but we do not wish to interpose an objection.

Mr. Manager Huston—It is a part of the same transaction.

Q. State whether you proposed, and what you did propose to do in regard to the payment when you applied for these lands.

A. I proposed to pay for them.

Q. When you first applied, did you have the money, and tender the amount of money?

A. I don't know that I tendered it,—the whole of it. I know I left some three hundred dollars,—three hundred and twenty dollars,—that was sent back to me?

Q. Three hundred and twenty dollars that was sent back?

A. Yes, sir; sent back with the patent.

Q. At the time the other pieces were patented?

A. Yes, sir.

Q. Well, when you applied on the thirtieth of April?

Hosted by Google

A. I did it through an agent. Application in writing, and money deposited; so the agent said.

Q. It is suggested to me by Col. Grosvenor that you did not finish the conversation you had with Mr. Edmonds. Will you go on and complete it from the time you was interrupted by the counsel for the respondent?

A. Those are the two particulars in which I claim the right to a patent,—those that I have stated.

Q. One was, that it was simply a check there, but no order?

A. No order. The check was made payable to order, and the order not on the check; it was not negotiable.

Q. The other was, that an affidavit was not filed?

A. Yes, sir.

Q. Showing that the land was not valuable for timber?

A. Yes, sir.

Q. What did Mr. Edmonds say when you made this statement?

A. He said so far as the affidavit was concerned, that that was a right vested in him, either to receive or not receive an affidavit.

Q. What further did he say?

A. He said that he had taken that check as cash, I think, as money, or regarded it as payment.

Q. Well, what did he say, if anything, in regard to letting Mr. Hewitt have the two hundred acres of land for the check, when you applied,—about letting Mr. Hewitt have his choice.

A. There was something. I do not think he mentioned that to me. I don't think there was much more said between him and me.

Mr. Manager Huston—That is all. You can take the witness.

CROSS-EXAMINATION OF D. W. ALLISON.

Cross-examined by Mr. Shipman.

Question—When did you have this talk with Mr. Barnard?

Answer—Some time between the third of June and the first of October.

Hosted by Google

Q. Where do you live, Mr. Allison?

A. In Saginaw City.

Q. How long have you lived there?

A. Something like eleven years.

Q. How many times were you down here last summer?

A. I don't remember. I was here but a few times,—some two or three, I think,—perhaps only twice.

Q. Can't you recollect some circumstance or business you had down here about that time, so that you can fix the date nearer than that?

A. I could not—not here.

Q. Where did you stop when you were here?

A. At the Lansing House.

Q. Always registered your name there—did n't you?

A. Always when I stopped there. There was one time I came here and had to wait for a train going east, and I might have had a talk with him then. There was no misconnection.

Q. Why do you fix the two extremes, the third of June and the first of October, as the times between which you had the conversation or the talk?

A. Well, some time in the summer. I know that until the third of June I was not at home; I was in the Lake Superior country most of the spring.

Q. You got home from the Lake Superior country about the third of June?

A. Yes, sir.

Q. Did you come immediately down here?

A. Well, I do not know. I could not tell.

Q. Could you not tell something in regard to the season; whether wheat had been cut or not?

A. I can not. I might possibly tell by reference to some papers at home, if I could get hold of them.

Q. How many times were you down here between the third of June and October.

A. I don't think more than twice.

Q. How long did you stay here each time?

Hosted by Google

A. I may have stopped over night one time, and the other time from one train until another came along.

Q. The time that you had this talk with Mr. Barnard, did you stop over night?

A. I could not tell you the first talk with him. I could not tell you.

Q. Is there no circumstance, Mr. Allison, by which you can locate that time a little more definitely?

A. I cannot.

Q. I can only suggest these things,—to call your attention to them,—from your business, or what you did. What did you do after you saw Mr. Barnard?

A. I don't know. I was traveling a good deal last summer, in different directions. If I only knew where I was going at the time I stopped over one train here, I could probably fix the time.

Q. Did you transact any other business in town?

A. No.

Q. Except that?

A. No, sir.

Q. And you only had one conversation with him?

A. I think that is all, before I wrote.

Q. The other time what did you do in town? I mean general business. Had you any business here?

A. Well, I did n't connect with the train, and I stopped here. I don't know whether I saw Mr. Barnard then or not.

Q. How long do you think you were here at that time?

A. I must have been here two or three hours,—three or four.

Q. Well, you went to the office then and applied for two hundred and forty acres, you say, of land,—spoke about two hundred and forty acres?

A. I claim patents for two hundred and forty. I think the patents issued about the the third of October, I think it was,—am not positive.

Q. Did you make the application when you were here?

Hosted by Google

A. No, sir, not the first time I did n't,—not to Mr. Barnard. I did not know in regard to the land or the timber.

Q. Did you transact any business in the office when you had that talk with Mr. Barnard?

A. No, sir.

Q. You made no application?

A. No, sir.

Q. Did you make that before or afterwards?

A. I made this application since.

Q. The application for the two hundred and forty acres?

A. Yes, sir.

Q. Now, you afterwards applied for some other, you say?

A. No, sir. I applied at the same time.

Q. Very well. How much did you apply for when you were here?

A. I applied for three "forties" more than I got.

Q. Now, you applied for some you got, by letter?

A. No, sir, I did not.

Q. I misunderstood you, then?

A. No, I sent to know whether it was vacant.

A. Now, then, you made your application for the southwest quarter of the northwest, and the west half of the southwest, of sixteen?

A. Yes, sir.

Q. When did you make your application for that?

A. The same time that I made application for that that I obtained patents for.

Q. That was about the third of October, or about the first of October?

A. I think the patents issued about the third of October; and it must have been at that time I made the application; for I think they were marked up and the patents probably had at that time. I think that is the usual way; I don't know.

Q. Did you have any talk with Mr. Barnard? Was the conversation with Mr. Barnard at that time?

Hosted by Google

A. Nothing special—more than just in reference to these patents, that I know of.

Q. Now, when you made the application there, and you found that there was some you could not get—won't you state the description that you could not get?

A. The southwest of the northwest and the west half of the southwest.

Q. The west half of the southwest?

A. Yes, sir.

Q. Is that the land that you talked with Mr. Barnard about?

A. Yes, sir.

Q. Now, what do you say he told you about that?

A. He told me that Cyrus Hewitt had reserved these lands.

Q. Did he say what on?

A. He told me they were gone; I could not get them.

Q. Did he say that Mr. Hewitt had deposited the money for them?

A. No, sir; I don't think that he did. He told me that I could not get them.

Q. Did he say they were applied for?

A. That he had reserved them.

Q. Did n't state what on?

A. No, I don't think he did. He showed me on the book, and also gave me a little memorandum of what part was vacant; that I got.

Q. Now, did you investigate that matter afterwards in your office?

A. No, sir, I did not, not until I came here,—done it through an agent here.

Q. When you did, what did you find then?

A. Why, the agent found that there was nothing but this check deposited against this land, that was made to the order of Cyrus Hewitt, and his order not upon the check.

Q. That check was for how much?

A. Two hundred dollars.

Q. A quarter payment?

A. A quarter payment.

Hosted by Google

Q. On the two hundred dollars?

A. Yes, sir.

Q. Now, you saw the Commissioner about it, afterwards?

A. Yes, sir.

Q. What did the Commissioner tell you?

A. He told me that I could not get the lands first.

Q. On account of this application?

A. Yes, sir.

Q. Did he not tell you that then he would notify Mr. Hewitt something about it, and see what could be done about it?

A. I don't think he told me that,—he told some others; it was my agent spoke to me about it. I don't think he mentioned that to me.

Q. Do you know anything about what the rule of the office is, where land is applied for, and quarter payments deposited?

A. Mr. Barnard told me that it was necessary that an affidavit should be made that the land was not valuable for timber.

Q. Mr. Barnard told you so?

A. Yes, sir.

Q. Did you read the law about it?

A. I did not.

Q. You don't know what the law says?

A. I don't know what the law says about it.

Q. You don't know how the Commissioner was to get that information then, whether they were, or were not, valuable for timber?

A. Well, I heard that affidavit had not been made.

Q. Well, you did not know how, under the law, he was to get it?

A. No, sir.

Q. Don't know what the law is about it?

A. No, sir.

Q. How do you know what the practice of the office is where an application shall have been made for land, and a quarter

Hosted by Google

payment is deposited, when an application is made for any part of it afterwards?

A. I suppose it is necessary that they make an affidavit in order to get it.

Q. Without regard to the affidavit, do you know what the practice is, as to how much land they can hold on that deposit of a quarter payment?

A. No; I do not.

Q. Did he not report to you, or did you get word from him, that the rule was, where money was deposited for school lands, quarter payments, to notify the party when an application was made for any of that land, to let him make selection of an amount of land which would equal the amount of money deposited?

A. I have given the words to that effect, that there had been a decision in the Supreme Court,—the Hill case, I believe. Yes, he told my agent,—that is so. I understand.

Q. And didn't he tell you that he would notify Mr. Hewitt, and let Mr. Hewitt make his selection as to which part or piece he would apply this money on, finally remaining?

A. He did not tell me. My agent says that he told him so; he did not mention this matter to me, I think.

Q. Well, now, did you not know, Mr. Allison, either from your own communication there with Mr. Edmonds, or from your agent, that he did notify Mr. Hewitt to make his selection?

A. I did not.

Q. Do you know that Mr. Hewitt made a selection?

A. Yes, sir. I know it from the deed.

Q. Well, now, you came down and applied for a "forty?"

A. For a "forty?"

Q. Yes, sir.

A. Since I came to this trial?

Q. Yes, sir.

A. On the 30th day of this month.

Hosted by Google

Q. Well, did you apply by your agent for a "forty?"

A. Yes, sir.

Q. What "forty" was that?

A. The southwest of the northwest.

Q. When was that application made?

A. The 30th of last month.

Q. The 30th of April?

A. The 30th day of April.

Q. Did you find that that had been applied for or taken by Mr. Hewitt?

A. Yes, sir; just the same as the rest. It was one of the five "forties."

Q. Well, at that time the rest hadn't been taken, had it,—the other four?

A. Yes, sir.

Q. Taken up by Mr. Hewitt?

A. All at the same time.

Q. At that time you did not apply for the others, did you?

A. No, sir.

Q. Did you make application since for that.

A. No, sir. They were sold the next day.

Q. You did not apply for any but that single "forty?"

A. That is all.

Q. And that was taken by Mr. Hewitt. Now, about this check. You thought it would not be paid to his order, did you?

A. His order was not on it. I did not think it negotiable, except his order was on it.

Q. Well, have you any means of knowing whether that check was paid or not?

A. Well, I could not say. I have not learned. I suppose probably it was.

Q. Did the Commissioner not tell you that he received that as cash?

A. He told me that he took it as payment, I think.

Hosted by Google

Q. That he supposed the money was in the bank, and could be had on that check?

A. He did not say so.

Q. Did he not tell you that if the money was not paid on that check that you could have the land?

A. No, sir, he did not.

Q. [By Mr. Manager Huston.] When did you say the check was paid, the 6th of last July?

A. The 6th of July, 1871.

Mr. Manager Huston—It should have been in the Treasury then, if it was cash.

Mr. Shipman—Did not your agent, Mr. Bush, report to you so?

A. I think not. I don't know. I don't remember. I don't remember whether he did or not.

Q. That was one legal ground that you claimed on, then?

A. Yes, sir.

Q. And the next was, that there should be an affidavit filed that the land was not valuable chiefly for timber.

A. Yes, sir.

Q. Now, what did Mr. Edmonds tell you about that?

A. He said it was a right vested in him as Commissioner.

Q. A right?

A. A right to receive the affidavit or not.

Q. Did he not tell you that the law was silent as to his manner of getting that information?

A. He did not tell me so. He told me that it was his privilege.

Q. That it was a matter of discretion left with him whether he should hold the land as valuable for timber or not?

A. Yes, sir.

Q. You got some of this land of Mr. Thomas.

A. Yes, sir.

Q. He got it of Mr. Hewitt?

A. Yes, sir.

Q. These are the papers that you received at the time?

Hosted by Google

A. Yes, sir; and the other "forty" I obtained the deed for from Mr. Thomas and his wife.

Q. Did you know where Mr. Thomas got that?

A. Of Mr. Hewitt.

Q. Have you got the paper?

A. No, sir, I sent it for registration; it was a patent assigned to Mr. Thomas, patented by Mr. Hewitt and assigned to Mr. Thomas.

Mr. Shipman—That is all.

The Presiding Officer—Have the Honorable Managers any further questions?

Mr. Manager Huston—That is all, Mr. Allison.

The Presiding Officer—Call your next witness.

TESTIMONY OF WILLIAM C. BUSH.

William C. Bush, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Huston:

Question. Mr. Bush, where do you reside?

Answer. Saginaw City.

Q. You heard the testimony of Mr. Allison, in regard to this school land, in town 32 north?

A. Yes, sir.

Q. Are you the gentleman that he spoke of as agent?

A. Well, I act as such.

Q. Well, sir, state what has transpired between yourself and Mr. Edmonds, or Mr. Barnard, on the 30th of April, or the 1st day of May, in connection with this land in question?

A. Well, I went to the Land Office and called for the books containing this section, to see the land marked.

Q. How were they marked?

A. "C. H."

Q. In ink or pencil?

A. With a lead pencil; and I inquired the nature of the marks, and was told that they were held on a check. I asked

Hosted by Google

the amount of this check, and when deposited, and I was informed.

Q. Well, sir, what was the information you got?

A. That the check was two hundred dollars.

Q. Deposited when?

A. Deposited in July, the 6th or thereabouts, I think, as near as I can recollect.

Q. July, 1871?

A. Yes, sir.

Mr. Manager Grosvenor—Mr. President, I would like to ask the indulgence of the Court, to be permitted to ask Mr. Allison one or two more questions. We may not get through with this witness before the Court will adjourn and he desires to return on the evening train to Saginaw.

The questions were admitted.

The Presiding Officer—This witness will step aside and Mr. Allison take the stand again.

D. W. ALLISON, RECALLED.

Examined by Mr. Grosvenor:

Question. Did you have any conversation with Mr. Edmonds about getting his land any other way, after it was patented to Mr. Thomas.

Answer. No, sir, not after it was patented.

Q. Well, before.

A. Well, I told him if I did not get it, I should take it to the Supreme Court.

Q. Did you make any similar statement to Mr. Thomas?

A. Yes, sir.

Mr. Manager Grosvenor—That is all.

CROSS-EXAMINATION OF D. W. ALLISON.

Cross examined by Mr. Shipman:

Question. Do you say that you threatened to go into court in this matter?

Answer. Yes, sir.

Hosted by Google

Q. To Mr. Edmonds and Mr. Thomas?

A. Mr. Edmonds and Mr. Thomas.

Q. What did Mr. Edmonds do?

A. He said he did n't fear the court; I could carry it there.

Q. Well, did it scare Mr. Thomas any?

A. Well, I don't know as it did.

Mr. Shipman—Oh, well, that's all.

WILLIAM C. BUSH, RECALLED.

Examined by Mr. Huston.

Question. You may go on with your statement now.

Answer. Well, I applied to Mr. Robinson. He is the man I applied to.

Q. Who is Mr. Robinson?

A. He is some clerk in the office.

Q. The one they call the "chief clerk?"

A. Well, I could not tell you what office he does occupy. I am acquainted with the gentleman some.

Q. Well, what did Mr. Robinson do?

A. Well, he gave me all the information that he knew of in the matter; and I asked him if Mr. Hewitt's deposit would hold these lands, being deposited so long. Whether the check would hold them without being cashed.

Q. What did he say?

A. He said that was left with the Commissioner; if the Commissioner was a mind to hold a check he could hold it, or anything else that he considered equal to cash.

Q. What reasons did he give that they had not paid this money into the Treasury.

A. Well, he did not give any reasons. He did n't give me any reasons. He did,—he said there was no time set—no time specified to compel them to pay it into the Treasury.

Q. Well, anything further?

A. Well, I told him I would like to get that "forty."

Q. Which "forty" was that?

A. The southwest of the northwest.

Hosted by Google

Q. What did he say?

A. Well, he told me to file an application.

Q. Well, sir, did you file an application?

A. I filed an application and deposited the money.

Q. Well, did you get the "forty"?

A. No, sir, not on that application.

Q. What day of the month was that?

A. That was the first.

Q. The first day of May?

A. Yes, sir.

By the Presiding Officer—What year?

A. This year.

By Manager Huston:

Q. Well, you say you did n't get it upon that application? Did you get it upon any application?

A. Well, it was purchased afterwards, from Thomas.

Q. Well, anything further?

A. Well, we had several conversations. I told that I did n't think his check ought to hold it, and another thing, his check did not cover the whole; as I had deposited the money for the part that I wanted, in full, and would like to have the patent for it.

Q. Are you acquainted with William A. Barnard?

A. Yes, sir.

Q. How long have you been acquainted with him?

A. Since 1867.

Q. Have you been engaged with him in business?

A. Well, yes, considerable.

Q. What kind of business?

A. Looking up lands.

Q. Well, sir, what was the arrangement between you and Mr. Barnard, in reference to the lands?

Mr. Shipman—One moment. We object. Whatever else may be claimed, I suppose it will not be claimed that we are to answer for Mr. Barnard's deeds, good or bad, before we went into that office. The question has no limit now. I object to

Hosted by Google

it because it covers too much time. It apparently relates back to 1867.

Mr. Manager Huston—Mr. President, if I mistake not, one of the articles of impeachment charges Mr. Edmonds with taking into his employ men not of good morals, not only of dissolute habits, but men that are not such as should be employed in the office. Now, I claim that if we can show by the proofs that Mr. Barnard, ever since 1867, has been purchasing large quantities of land, clandestinely, in other parties' names, not in fact purchasing, but pretending to purchase them, and reserving them upon A, B, and C's contract without, A, B, and C's consent, having his land-hunters all through these northern counties looking up lands and reserving them and keeping them out of market until he could sell them at an advance,—never putting any money in them,—if we can show that has been the constant practice, and that Mr. Edmonds had knowledge of the fact, it seems to me that must be competent, and if he continued the practice right along,—had been in the practice four years before he became Deputy, or before he went into the office under Mr. Edmonds, and that he continued the practice, as we shall show, since he has been in that office under Mr. Edmonds,—I think the evidence would be competent, and that is what we expect to show in reference to Mr. Barnard's transactions in the lands of this State; he being a clerk in the office in the first place, and afterwards Deputy, he was prohibited from having any interest, directly or indirectly in lands; and we submit that it is competent for us to introduce the proof. We propose to connect it and make it one continuous transaction, and that Mr. Edmonds had knowledge of and indorsed this transaction by taking him into his employ, and giving him the first place in his office,—a man who has been the chief man nearly in the greater share of the transactions in that office, as we shall show; and we submit that the testimony is competent for those reasons.

Hosted by Google

Senator Romeyn—Mr. President: I wish to take advantage of the rule we adopted this morning, and object to it myself, and ask the ruling of the Chair upon it.

Mr. Manager Huston—I do not understand the gentleman.

Senator Romeyn—It was understood, after some discussion this morning, that if any question should be proposed which was considered objectionable by any member of the Court, that that member of the Court might object to it. I consider this line of examination entirely incompetent, not connected with this subject. It is far back of the time, when we charge anything against the respondent. And, therefore, I ask the ruling of the Chair upon it, on my own account.

The Presiding Officer—The Chair will take the ruling of the Senate upon that question, the objection coming from a member of the Court.

Senators: The question is, Shall the question proposed by Mr. Manager Huston be put to the witness? Those in favor will, as their names are called, say Aye; those opposed, say Nay.

Senator Wheeler—What is the question?

The Presiding Officer—Will the Honorable Manager reduce his question to writing, that the Secretary may preserve it, before the question is put?

Mr. Manager Huston—I have reduced the question to writing. It is as follows: What was the arrangement between yourself and Mr. Barnard in regard to the lands?

The Presiding Officer—The Secretary will read the question. Senators will please give their attention.

The Secretary read the question.

The Presiding Officer—The question is: Shall the question put by Manager Huston be put to the witness?

Mr. Shipman—Mr. President, I understand that applies to a transaction before the Commissioner went into office.

Mr. Manager Huston—Before and since—one continuous transaction with this party—this same man. I wish to state just briefly, Mr. President, the facts. I do not propose to argue the

Hosted by Google

question. That it relates to a transaction commencing in 1867 and that did not end until 1871,—one continuous transaction between Mr. Barnard and the witness.

The Presiding Officer—The Senator from the Twenty-ninth sends up the following question, which the Secretary will read:

Senator Moffatt—Do I understand that the Manager proposes to prove that Mr. Edmonds had knowledge of the fact.

Mr. Manager Huston—I propose to bring it to Mr. Edmonds knowledge.

The Presiding Officer—The Secretary will read the question sent up by the Senator from the Twenty-ninth.

The Secretary read the question, as follows:

"I ask of the Manager if it is understood that Mr. Edmonds is to be connected with this arrangement."

Mr. Manager Huston—We say this: we expect to bring it to the knowledge of Mr. Edmonds; and not only that, but we claim as matter of law, that Mr. Edmonds is the responsible head of the office, and is responsible for the acts of his Deputy and his clerks. But we expect to bring it to Mr. Edmonds' knowledge; that is what we expect to do.

Senator Briggs—Mr. President: I beg to call the attention of Senators to Article VI. Will the Secretary read it?

The Presiding Officer—The Secretary will read Article VI.

The Secretary read the article, as follows:

"That said Charles A. Edmonds, Commissioner of the State Land Office, during his official term as such Commissioner, to wit: from about the first day of January, 1871, to the 28th day of March, 1872, unmindful of the high and responsible duties of his office, of his oath of office, and disregarding the rights of the people of this State, and for the corrupt and unlawful purpose of personal benefit and gain, did appoint and keep in his office, as clerks, certain men of dissolute habits and character, and unworthy the high trust and confidence necessarily required of men in their positions, and did, also, allow his clerks in office, in violation of the laws of this State,

Hosted by Google

to purchase, directly and indirectly, from the State, lands for sale in said Land Office, and to be interested in purchases made in the name of others, directly and indirectly, and to traffic, and corruptly sell and get unlawful gain, in the sale of valuable information contained in such office, within their knowledge as such clerks, and to act as the agents, for reward, of certain land dealers, in entering land, thus giving such dealers an undue advantage over others seeking the entry of lands at said office.

"And the said Charles A. Edmonds, Commissioner of the State Land Office, was thus then and there guilty of corrupt conduct in office, and did commit a misdemeanor in office."

The Presiding Officer—The question is, Shall the question proposed by Mr. Manager Huston, be put to the witness?

Senator Wheeler—Mr. President, I wish the Honorable Manager would state the nature of the transactions they expect to prove, to show whether it has any application to any of these articles.

Mr. Manager Huston—I will state. I supposed I had stated them so that it was understood. The nature of the transactions we expect to prove, are substantially these: That Mr. Barnard entered into an arraugement with this witness, by which Mr. Barnard was to furnish him plats of the townships, for which nothing was paid, and nothing went into the Treasury; furnishing him at one time in the month of May, 1871, fifty plats, that never were paid for, since Mr. Edmonds has been in the office; that Mr. Barnard was to furnish half of the money to pay the expenses in looking the lands, but not to pay anything for services; that Mr. Barnard was to mark the lands as reserved, in different parties' names upon contracts, as the case might be, and hold them until the witness or Mr. Barnard found somebody that wanted to purchase the land, or buy the minutes and pay in advance for the lands. That is what we expect to prove, substantially, and that a large amount of lands were looked up and marked

Hosted by Google

as reserved to different parties, and held for market in that way, until they were sold.

The Presiding Officer—Did this arrangement continue through the administration of Mr. Edmonds?

Mr. Manager Huston—It continued into the administration of Mr. Edmonds.

The Presiding Officer—To his knowledge?

Mr. Manager Huston—And to his knowledge, as we expect to prove; and that, it seems to me, is admisssible evidence, as we shall show that a large amount of these lands, unless they have been wiped off the books since these proceedings have been commenced, are still marked as "reserved," on the books,—and it seems to me that ought to be sufficient evidence,—if we shall show that, as we expect to show, amounting probably to thousands of acres which were only a short time ago still upon the books of the office as reserved lands. And, as matter of law, we say he is bound to know what these books show.

Mr. Manager Grosvenor—Mr. President: I call for the reading of Article IV, in relation to conspiracy.

The Presiding Officer—The Secretary will read the article.

The Secretary read the article, as follows:

"That said Charles A. Edmonds, Commissioner of the State Land Office, unmindful of the high and responsible duties of his office, and of his oath of office, on the first day of June, 1871, in the said Land Office, at Lansing, in the county of Ingham, and on divers other days and times during his official term at Lansing, aforesaid, did unlawfully conspire with one William G. Patrick, and divers other persons unknown, fraudulently to withhold from sale, and mark, or cause to be marked, as sold, large quantities of State lands, for the benefit of said conspirators, in fraud of other *bona fide* purchasers and settlers, with the intent to cheat and defraud such *bona fide* purchasers and actual settlers, and all others who might wish to purchase the same.

Hosted by Google

"And in pursuance of said conspiracy the said Charles A. Edmonds did mark, or cause to be marked, in said office, on the plat books thereof, as sold, large tracts of land that were not sold, by which Edmonds, his Deputy, and clerks in office corruptly received large sums of money; and said, Charles A. Edmonds, Commissioner of the State Land Office, was guilty of corrupt conduct in office, a violation of his oath of office, and a great fraud upon the people of this State."

Mr. Manager Grosvenor—Now, Mr. President, I think the testimony is admissible under that article, because it is a well settled rule of law, upon the admissibility of evidence, that a conspiracy may have been formed long before—years before—the party accused may have any knowledge of it. But if he comes in and acts in any way indorsing, approving, or acting with the conspirators, he becomes a party to the conspiracy; and if we can show by this testimony that this conspiracy was entered into by Mr. Barnard and other parties long before Mr. Edmonds' time, and it continued up to his time, and he at any time became a party to that, he is a party to the conspiracy, —he is a conspirator.

The Presiding Officer—The hour fixed by the standing rule for the adjournment of the Senate having arrived, the Senate stands adjourned until to-morrow morning at 9 o'clock.

Lansing, Saturday, May 4, 1872.

The Senate met and was called to order by the President *pro tem.*

The Sergeant-at-Arms made the usual proclamation.

Roll called: quorum present.

The Presiding Officer—Upon the adjournment last evening, a question was before the Senate, which the Secretary will read.

Hosted by Google

The Secretary read the question, as follows: "What was the arrangement between yourself and Mr. Barnard in regard to the lands?"

The Presiding Officer—The question before the Senate was, Shall the question proposed by Mr. Manager Huston be put to the witness? Are you ready for the question?

Senator Ball—Mr. President, I do not know that the proper time has arrived, but I have an announcement that I desire to make to the Senate at this time.

The Presiding Officer—The Senator from the Twenty-ninth will make his announcement.

Mr. Ball—Mr. President, we have just learned of the death of the Hon. Isaac M. Cravath, a member of the Senate, from the Twenty-first Senatorial district of this State which occurred at an early hour this morning; and I wish Mr. President, to offer some resolutions and to premise them by a few remarks.

In making this announcement to the Senate, I cannot but add a few words in tribute of respect to the deceased.

Senator Cravath was a gentleman of undoubted ability; as a speaker, he was rapid and fluent, and at times the most eloquent member among us.

He was a gentleman possessed of many scholarly attainments, and received from many of our literary associations invitations to address them upon various topics of interest, and his lectures are spoken of in terms of high appreciation. At times, many of us have found him in debate an antagonist of no mean calibre; and in the defense of measures advocated by him, he was strenuous, active, and industrious. I have felt his manly oppositions fully, and I most cheerfully accord this tribute to his memory.

Death comes to us all; it is certain. While in full health and vigor, and not oppressed with the circumstances of life; while surrounded by the beautiful objects of nature, all teeming with animation, we too seldom think of that time when

Hosted by Google

we shall lie cold and inanimate in death; when wife and children shall be compelled to say the parting word to the husband and father,—the one who has surrounded them with the comforts of the world,—that one who lies before them motionless, cold, and silent.

Then the tremendous power of that blow seems too great to bear. We are unable to mourn with the mourners,—we are unable to describe or be fully sensible of the anguish of the wife of the deceased; and I only express the common sentiment of this body in saying that we sympathize with the bereaved wife.

The deceased, an officer in our gallant army, was brave and efficient. His sickness and death were caused by disease there contracted.

Mr. President, I do not intend to extend my remarks: I wish, further, to announce that I am informed that the remains of the deceased Senator are to be taken to Coldwater for interment; and now, Mr. President, I beg leave to offer the following resolutions, and request the Secretary to read them.

The Secretary read the resolutions, as follows:

Whereas, We have learned this morning, with profound sorrow, of the death of the Hon. Isaac M. Cravath of Lansing, Michigan, a member of this Senate for the Twenty-first Senatorial District; therefore

Resolved, By the Senate of the State of Michigan, that so great a loss to us, and to those whom he represented, of an active, vigilant, and upright public servant, in the death of the Hon. Isaac M. Cravath, should receive a befitting and appropriate recognition;

Resolved, That our appreciation of the kind, manly, and genial traits which characterized the deceased in all his official acts as a member of this Senate, and in his private intercourse with us, causes a feeling of profound sorrow;

Resolved, That to his bereaved wife, we extend, with deepest sympathy, our condolence in the loss of a true and loving husband, thus suddenly removed from her;

Hosted by Google

Resolved, That as a further mark of respect for the deceased, the Senate attend his funeral in a body, and that these resolutions be entered upon the journal, and a copy of them be transmitted to the wife of the deceased;

Resolved, That this Senate do now adjourn until Monday next, May 6th, at 2 o'clock P. M.

The Presiding Officer—The question is upon the adoption of the resolutions. Are you ready for the question?

Mr. Waterbury—Mr. President: I feel it to be my duty to rise in my place and bear testimony to the worth of our brother who is dead. I feel that it is another warning to us that we are mortal. Our brother has gone to the land, the inhabitants whereof shall no more say, "I am sick." And it appears to me, Mr. President, that it is a proper time for us to receive a lesson,—to remember that we are mortal,—that "in the midst of life we are in death," and it should teach us a lesson that we should all remember, that we are not only mortal and that we are beset with human frailty, but that in the heat of debate, when we feel—and I acknowledge that I have frequently felt —that our feelings carry us a great way too far, we should remember that our opponents' feet may be even then in the shadow of the dark mountains of death, and we should deal kindly with each other. Mr. President, I feel how weak I am, —how incapable of expressing my feelings upon such an occasion as this, but I felt it to be my duty to pay this tribute of respect to the memory of our departed brother.

Mr. Sheley—Mr. President, I cordially support the resolutions that have been offered. Not only we, as a body, but the State itself, has sustained a loss, in the death of Senator Cravath; not only that, but the church of which he was an honored member, and office-bearer,—the First Presbyterian Church of this city,—the church, itself, will realize that one of its members has been stricken down, and they are called upon to mourn his death.

Death, it is true, comes to us very unexpectedly, but it is a very little matter to any of us, if we are prepared to die, as

Hosted by Google

I believe was the fact in his case. Without the preparation for death, life to each one of us is a failure. It would be better that we had never lived, than that we live entirely to ourselves. A man whose feelings and thonghts are taken up with the affairs of this world,—he dies; but when a man has made his peace with God, and become a member of the Church of Christ, and lives for others as well as himself, he never dies. He was a teacher in the Sabbath-school,—an instructor of the young, trying to lead them in the path of virtue and religion. I say, the Church has sustained a loss, the Sunday-school has sustained a loss, and the Senate, of which he was an honored member, has sustained a loss; and therefore we are called upon to mourn in different capacities the death of our brother.

We are each admonished that life, to us, is all uncertain. Two of the members of this Senate have passed away within a little over a year. Thirty-two of us; now thirty. God is saying to each one of us, "Be ye also ready." He speaks to me,—He speaks to you,—He speaks to every member of this Senate: "Be ye also ready, for in such an hour as ye think not, ye will be called."

Why are we permitted to live in this world? It is not for ourselves entirely, but it is for the influence we exercise while here; and when we are dead, that influence does not cease, but goes on, and on, and although dead, we do not cease to speak. Just so, we believe, our brother is speaking now, to the members of the Sabath-school, and I feel called upon to say this of our brother. I have met him frequently. I have met him as a Christian brother, a warm-hearted Christian, and a man trying to do what he could to bring religious influences upon the young.

The Presiding Officer—The question is upon the adoption of the resolutions. Those of you in favor of their adoption, as your names are called, say Aye; those opposed, No. The Secretary will call the roll.

Hosted by Google

The Secretary called the roll.

The Presiding officer—The resolutions are adopted unanimously. The Senate, sitting as a Court of Impeachment, stands adjourned until Monday afternoon, at two o'clock.

Lansing, Monday, P. M., May 6, 1872.

The Senate met and was called to order by the President *pro tem.*

The Sergeant-at-Arms made the usual proclamation.

Roll called: not a quorum present.

Absent without leave: Senators Barber, Begole, Cawley, Hannahs, Mann, Neasmith, Prutzman, Romeyn, Wilcox, Wood.

The Presiding Officer—There being not a quorum present, the Senate, sitting as a Court of Impeachment, stands adjourned until to-morrow morning at 9 o'clock.

Lansing, Tuesday, May 7, 1872.

The Senate met and was called to order by the President *pro tem.*

The Sergeant-at-Arms made the usual proclamation.

Roll called: quorum present.

Absent without leave: Senators Cawley, Hannah, Storrs, Waterbury, and Wood.

The Presiding Officer—When the Senate adjourned upon Saturday, the witness Bush was upon the stand. A question was then pending before the Senate. Since then no business has been transacted. The question before the Senate was the question proposed by Mr. Manager Huston to be put to the witness. Are you ready for the question?

Hosted by Google

Mr. Sheley—Mr. President, I would like to ask what members are absent without leave this morning?

The Secretary—Senators Cawley, Hannahs, Storrs, Waterbury, and Wood.

The Presiding Officer—The Secretary will read the question,

The Secretary read the question, as follows:

"What was the arrangement between yourself and Mr. Barnard in regard to the lands?"

Mr. Shipman—Mr. President: Objection was made to this question by counsel for the respondent, and afterward by a Senator. My objection to the question was, it will be remembered, that under the explanation here, which I suppose we must take as the facts in the case, they are to go back to 1867, when an arrangement was made between Mr. Barnard and the witness in regard to lands. They say that that was a continuing arrangement,—lasted until the present Commissioner came into office; that after he came into office, and in May 1871, some plats were obtained—forty or fifty I believe the statement of the Manager is—from the office, the money for which did not go into the State Treasury. And they also state that they intend to show—expect to show—that the respondent had notice of these facts. I do not understand the Honorable Managers, however, to claim that the Commissioner had notice of the arrangement between Mr. Barnard and the witness,—they will correct me if I am wrong in that. I understand the statement to mean this: they will show, and we will take it for granted that they will show, that Mr. Edmonds knew of what transpired in the office during the time he was there, namely, that these plats were obtained, for instance, in May, 1871. I do not know that they claim really that any lands were marked up, but at all events the statement goes to this extent, as I understand it, of simply bringing to the Commissioner notice of what transpired during the time that he was in office.

Now we say that the proof of what was done should be limited to the same time. If they do not propose to show that he knew of this arrangement before that time, then we say

Hosted by Google

they ought not to be allowed to prove it. It is a matter that is not in issue. We are not impeaching Gen. Pritchard,—that is not the proceeding here; nor are we trying Mr. Barnard. It is simply the acts of the Commissioner; and he cannot be impeached for things that did not transpire during his term of office. You cannot go back of that.

Now, Mr. President, inasmuch as something has been said here as to the nature of this proceeding, I will beg leave for a moment to call the attention of the Senate to 1 Story on the Constitution, sections 797, 798, and 799, parts of which I will now read. He says:

"Resort, then, must be had either to parliamentary practice and the common law, in order to ascertain what are high crimes and misdemeanors, or the whole subject must be left to the arbitrary discretion of the Senate for the time being. The latter is so incompatible with the genius of our institutions that no lawyer or statesman would be inclined to countenance so absolute a despotism of opinion and practice, which might make that a crime at one time, or in one person, which would be deemed innocent at another time, or in another person. The only safe guide in such cases must be the common law, which is the guardian at once of private rights and public liberties."

I cite this language here, with reference to the statements that have been made here by the Honorable Managers upon the other side with reference to the nature of these proceedings, as though the Senate were a law unto themselves,—were guided by no law,—altogether uncontrolled in the matter,—at liberty to go where they pleased,—bound by no precedents, and scarcely bound—I beg pardon for saying it—I was about to say, scarcely bound by common sense, in the matter. I do not quite mean that, Mr. President; but the idea is attempted to be conveyed here that the rules of law that govern proceedings of this kind have no application here if they chose to disregard them. I wish to state that this is a criminal proceeding; it is not a civil proceeding in any degree or in any way.

Hosted by Google

A civil remedy is for the enforcement of payment for an injury done,—for damages for an injury done to another; or it may be for an injury done to the State, for that matter. This proceeding partakes of the nature of punishment,—it has the character of punishment,—the judgment is of that character. It is true that it does not reach to the extent that it does under the common law and under the English practice, for there they punish the officer and punish the man,—here we punish the officer but not the man.

But that does not alter the character of the proceedings in any degree. Many offenses at common law, and under the English law, when you come to the question of punishment, have been materially changed,—many offenses which were formally capital offenses have ceased to be so; but yet it in no degree alters the character of the proceedings. Here, under our Constitution, the judgment shall be limited to removal from office, leaving the man to answer for his deed in the ordinary court, but the proceeding is the same. It is a criminal proceeding for the infliction of a punishment upon him, no difference how light it may be, but it is in no degree a civil proceeding.

The Honorable Manager cited us to the case of Judge Chase. I will refer to that case. There were eight articles against Judge Chase, every one of which charged a crime, except the fifth. That did not charge a crime distinctly. The position taken by the counsel for the respondent was this: That article fifth did not in express terms charge a criminal intent upon the respondent. The question was raised squarely. In voting upon the articles generally, the Senate found him not guilty, but upon seven of the articles the vote ranged from four to nineteen for guilty; but when the vote was taken upon the fifth article, where the intent was not charged, the vote was, unanimously, not guilty. I refer to that because it has been cited upon the other side.

A word more from Story, Sec. 798:

"The doctrine indeed, would be truly alarming, that the

Hosted by Google

common law did not regulate, interpret, and control the powers and duties of the Court of Impeachment. What, otherwise, would become of the rules of evidence, the legal notions of crimes, and the application of principles of public or municipal jurisprudence to the charges against the accused? It would be a most extraordinary anomaly, that while every citizen of every State, originally composing the Union, would be entitled to the common law as a birthright and at once his protector and guide; as a citizen of the Union or an officer of the Union he would be subjected to no law, to no principles, to no rules of evidence.

"It is the boast of English jurisprudence, and without it the power of impeachment would be an intolerable grievance, that in trials by impeachment, the law differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments, prevail. For impeachments are not framed to alter the law; but to carry it into more successful execution, where it might be obstructed by the influence of too powerful delinquents, or not easily discerned in the ordinary course of jurisdiction by reason of the peculiar quality of the alleged crimes."

One word more from Sec. 799:

"It seems, then, to be the setttled doctrine of the High Court of Impeachment that though the common law cannot be a foundation of a jurisdiction not given by the Constitution or laws, that jurisdiction, when given, attaches, and is to be exercised according to the rules of the common law, and that what are and what are not high crimes and misdemeanors is to be ascertained by a recurrence to that great basis of American jurisprudence. The reasoning by which the power of the House of Representatives to punish for contempts (which are breaches of privilege and offenses not defined by any positive laws) has been upheld by the Supreme Court, stands upon similar grounds; for if the House had no jurisdiction to punish for contempts, until the acts had been previously defined

Hosted by Google

and ascertained by positive law, it is clear that the process of arrest would be illegal."

I call attention to that because I think we are wandering too far from the true rule of this matter. I wish to make no argument upon the propositions advanced, or to take up any time with the question.

Now, under this Article VI., there are several things charged; the first of which is, "that for the corrupt and unlawful purpose of personal benefit and gain, did appoint and keep in his office as clerks, certain men of dissolute habits and character, and unworthy the high trust and confidence necessarily required of men in their position." Unworthy of the high trust, I suppose, because they were men of "dissolute habits and character."

Second: That he "allowed his clerks, in office, in violation of the laws of this State, to purchase, directly and indirectly, from the State lands for sale in said Land Office." The word "allowed," giving the utmost latitude of construction to it, I suppose will mean that he did it knowingly. We will give them the benefit of the doubt, so far as the pleadings are concerned,—that he, knowing the fact, allowed his clerks to do as above alleged.

Third. That he allowed his clerks to be interested in purchases made in the name of others;

Fourth. That he allowed them to "corruptly sell and get unlawful gain, in the sale of valuable information contained in such office;" and

Fifth. That he allowed them to "act as agents for reward of certain land dealers, in entering land, and thus giving dealers an undue advantage over others in seeking the entry of lands at said office."

Now, the last Manager who spoke also called attention to Article V., which alleges a conspiracy with one Wm. S. Patrick and others, divers persons unknown. Now, I submit, the first thing to do, under that, is to show a conspiracy between Edmonds and the person alleged,—not a conspiracy between

Hosted by Google

Barnard and somebody else. It is quite immaterial whether anything was done under the conspiracy. The fact of the conspiracy is the main point.

I will call attention to the People *vs.* Richards, 1 Mich. 216, upon that proposition:

"In a conspiracy, the offense consists in the unlawful agreement, and not in the acts that follow it," is the head-note. The opinion of the Court upon that point will be found upon pages 223 and 224, which I will not read.

The case of Alderman *vs.* Alderman, 4 Mich. 414, is to the same effect.

In the case of The People *vs.* Clark, 10, Mich. 310 the same doctrine is enunciated.

Under this article, according to these authorities, they must show a conspiracy between Edmonds and the person alleged. I do not understand that the proof comes up to that.

Now, if we are to be governed or guided in any degree by the rules which obtain in ordinary proceedings for the punishment of crime, I submit to the Senate that this testimony is not admissible. I wish distinctly to be understood that we will not object to anything that happened during the administration of Mr. Edmonds, which the Managers propose in any degree to bring to his knowledge. If he has done wrong as an officer, we invite them to come in here and substantiate the charges they have made. We not only submit, but we ask them to do it. But we protest against being held liable for acts, or transactions, which it is alleged occurred before his term. The question as to whether this agreement was made between Barnard and the witness in 1861, it seems to me, ought not to be admitted, unless they propose to show that Edmonds had notice of it. I do not understand that the Managers mean to show any such thing. Whatever they say they will show we will permit to be introduced in evidence.

If they simply propose to show that he had notice of what was done in the office since he was made an officer; if they

Hosted by Google

propose to bring acts done by Mr. Bush and Mr. Barnard home to him, we will not object; but we object to their proving matters that they do not bring to his notice.

Mr. Cochrane—As I understand the theory of this question it rests upon this ground: That a contract or agreement of some kind existed between Barnard and Edmonds, entered into some time in the year 1867; that this continued in existence down to and some time into the period of Mr. Edmonds' administration, if it does not still continue.

The object of asking the question primarily, or in the first place, was to show the character of these acts. It was but an expeditious way of explaining what these acts were.

Of course we do not claim that the Commissioner is bound by any acts of his present Deputy which were committed before he went into his office; but simply so far as he knows what those acts are while he has been in office, must he be held responsible for them. We shall also claim that the present Commissioner, as I have already stated, and has been said by my co-managers here, is bound to see that his deputies, his clerks, and the officers that are placed under him by law, and selected in accordance with the law, perform their respective duties under and in accordance with the law; that he is responsible for those acts, and is bound to know how these officers perform their duties, As a matter of course, if there was any single violation of law, we should not claim that this Commissioner should be held in this court to answer for such violation; but, on the other hand, if there is a series of violations that have been continued ever since he has been in that office, then we shall claim that he has been negligent in his duties, and that such negligence amounts to misconduct and misfeasance in office. That is our theory of the case. Whether we shall be able to bring positive knowledge to this Commissioner, or not, I cannot state; the other Managers know more in regard to that matter than I. But if we show that this man, Barnard, has been systematic-

Hosted by Google

ally violating the law for the past eighteen months, we submit it would be a question which might well be left to a jury, or any court, whether a knowledge of these facts might not be presumed on his part.

Now, so far as this authority which has been read is concerned, I have a single comment to make upon it. The learned author, of course, is high authority in every court, and his adjudications, his remarks, his commentaries, and all that he says, and all that he has said, are worthy of attention; but the clause from which the gentleman has quoted is not referring to this character of conduct. He goes on to say:

"What are impeachable offenses? They are 'treason, bribery, or other high crimes and misdemeanors.' For the definition of treason, resort may be had to the Constitution itself; but for the definition of bribery, resort is naturally and necessarily had to the common law; for that, as the common basis of all our jurisprudence, can alone furnish the proper exposition of the nature and limits of this offense. The only practical question is, What are to be deemed high crimes and misdemeanors? Now, neither the Constitution nor any statute of the United States has in any manner defined any crimes except treason and bribery, to be high crimes and misdemeanors, and as such impeachable. In what manner, then, are they to be ascertained? Is the silence of the statute-book to be deemed conclusive in favor of the party, until Congress have made a legislative declaration and enumeration of the offenses which shall be deemed high crimes and misdemeanors?"

Now, it is evident from the remark with which Judge Story commences, that he was speaking only in regard to crimes; but the question proposed here has no reference whatever to crimes. It may be a violation of the law, but it does not come within the category of criminal offenses. It is merely misfeasance or malfeasance in office. Malfeasance or misfeasance may sometimes be a crime; but we do not claim that the conduct with which we charge Mr. Barnard constitutes a criminal charge against him.

Hosted by Google

The author goes on to say,—1 Story on the Constitution, 797: "Again, there are many offenses, purely political, which have been held to be within the reach of parliamentary impeachments, not one of which is in the slightest manner alluded to in our statute-book. And, indeed, political offenses are of so various and complex a character, so utterly incapable of being defined or classified, that the task of positive legislation would be impracticable, if it were not almost absurd to attempt it;" still showing that the author was speaking of crimes and offenses which, though connected with the office, were purely crimes and misdemeanors.

Then, it is asked, and I am not aware whether the gentleman was reading or whether it was his own remark, but at all events, it was based upon good sense, that would it not be strange that one court should be in a position to find that conduct impeachable which another court may entirely refuse to find impeachable?

Now, so far as crimes are concerned, so far as misdemeanors are concerned, especially those of a technical character, there can be no doubt but that the question may be propounded with a great deal of force; and the rule is, so far as relates to that class of cases, that courts of impeachment act upon the same basis exactly as in criminal jurisdictions; thus if an officer commits a murder, there is no question but what this Court, if that question were before it, would decide upon the same ground, and would define murder in the same way that a court of criminal jurisdiction would define it. If it was highway robbery, or larceny, this Court would define it in the same way, but as to a case of misconduct in office there must be a large discretion left for the judgment of the court. It would not be impossible, nor would it be improbable, that one court might deem that misconduct in office which another court might not so regard. Now, there is a wide distinction between this class of cases, and the question proposed to be asked the witness as to that contract. That goes to the question of misconduct in office, but it

Hosted by Google

does not affect the position of the respondent here as a man charged with a criminal offense. It is for this reason that we submit that the question is a proper one to be brought before this Court, in order that the Senators may see precisely the entire scope of the transactions which have been carried on in this office between Mr. Barnard and outside parties during the time that this officer has held his office.

The Presiding Officer—Do the Honorable Managers wish to say anything?

Mr. Manager Huston—I do not think the counsel for the respondent fully understand the statement that I made when the objection was raised to the question, and we were asked what we expected to prove by this witness. We expect to prove that some time in 1867 or 1868,—I will not be certain as to the time,—that this witness commenced to look lands with Mr. Barnard; that Mr. Barnard was interested in the lands that he was looking; and that they were withheld from sale until the lands could be sold or the minutes disposed of to other parties,—they to share in the profits; that this was continued right along,—a continuous transaction into the administration of Mr. Edmonds,—and a large amount of lands selected in the same manner after Mr. Edmonds came into office; and we expect to show such a state of facts as that we believe this Court will be warranted in coming to a conclusion, and finding as a matter of fact, that Mr. Edmonds had knowledge of these transactions at the time of and previous to his making Mr. Barnard his Deputy. If we show this state of facts it seems to me there cannot be any doubt about the admissibility of the testimony.

I concede that we are not here to impeach Mr. Pritchard; we are not here to impeach Mr. Barnard. We are here for the purpose of trying Mr. Edmonds, and we do not expect, nor do we propose to seek for, the introduction of any testimony except that which we believe is pertinent to the issue raised in this case. It seems to me, if we show such a state of facts as I

Hosted by Google

have intimated, there can be no doubt about the admissibility of the testimony.

So far as the question goes, which was raised by counsel, I understand the rule, and the authority laid down in the different cases, to be that the Senate is the sole judge as to what are crimes and misdemeanors under the Constitution; they are the sole judges of what constitutes corrupt conduct in office; and if this kind of testimony is to be excluded, as a matter of course, it will be with a great deal of difficulty that we may be able to establish the fact that Mr. Edmonds kept these clerks in his office, with the knowledge of the prior transactions, and with the knowledge that they were to be continued. We have already shown by the testimony in this case, that land has been withheld, to the detriment of the State, and contrary to law, and we expect, by this testimony, to show that it was done with the knowledge and consent of Mr. Edmonds, and with the full knowledge of the prior transactions, and the transactions in this office; and that large amounts of land have been withheld in the same way and in the same manner, as in town 32 north, 2 west; and it seems to me, if we shall also show that to be the fact, there can be no question as to the admissibility of the testimony.

I know the counsel for the respondent is very technical in this case, and I suppose that is the way he wants to try this case.

What we want is, to have the facts of the case, so you may judge whether Mr. Edmonds ought or ought not to be removed from office; and I maintain that that is the only question here. For this offense you cannot touch his property, or his person, so that the sole question is, Shall he remain in that office?

I wish to call your attention to some authority on that question. I read from the American Law Register, page 644:

"It is absurd to say that impeachment is here a mode of procedure for the punishment of crime, when the Constitution declares its object to be removal from and disqualification to hold office, and that 'the party convicted shall nevertheless be

Hosted by Google

liable and subject to indictment, trial, judgment, and punishment according to law' for his crimes."

"Impeachment is a proceeding purely of a political nature. It is not so much designed to punish the offender as to secure the State. It touches neither his person or his property, but simply divests him of his political capacity."

That is further than we propose to go here, and further than we can go, because we cannot divest him of his political capacity; because Mr. Edmonds, should he be impeached, could be re-elected to office, and you cannot find any law that says he cannot be.

Senator Briggs—What book do you refer to?

Mr. Manager Huston—The 6th Vol., American Law Register. I think it is an article read by Judge Lawrence of the State of Ohio.

"With these landmarks to guide them, our fathers adopted a Constitution, under which official malfeasance and nonfeasance, and, in some cases, misfeasance may be the subject of impeachment, although not made criminal by Act of Congress, or so recognized by the common law of England or of any State of the Union. They adopted impeachment as a means of removing men from office whose misconduct imperils the public safety, and renders them unfit to occupy official position.

"All this is supported by the elementary writers, both English and American, on parliamentary and common law; by the English and American usage in cases of impeachment; by the opinions of the framers of the Constitution; by cotemporaneous construction, all uncontradicted by any author, authority, case, or jurist, for more than three-quarters of a century after the adoption of the Constitution."

We claim this under the Constitution of the State of Michigan.

Curtis, in his History of the Constitution, says:

"Although an impeachment may involve an inquiry whether a crime against any positive law has been committed, *yet it is not necessarily a trial for crime,* nor is there any necessity, in

Hosted by Google

the case of crimes committed by public officers, for the institution of any special proceeding for the infliction of the punishment prescribed by the laws, since they, like all other persons, are amenable to the ordinary jurisdiction of the courts of justice, in respect of offenses against positive law. *The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office.*"

Senator Moffatt—I will ask if the time is not up, under rule XVII?

The Presiding Officer—It is not. The Honorable Counsel have occupied twenty-five minutes.

Mr. Manager Huston—The true inquiry which we desire to impress is, whether there is sufficient cause to remove Mr. Edmonds from office, or whether there is not.

Mr. Manager Grosvenor—I would like to occupy the other five minutes.

The Presiding Officer—The Manager has the right.

Mr. Manager Grosvenor—In support of the position I took before, that this testimony is admissible under the fourth article, and sustains the theory, I will read a sentence or two from 2d Roscoe's Criminal Evidence, page 416, which is all I have time to read:

"The *existence* of the conspiracy may be established either, as above stated, by evidence of the acts of third persons, or by evidence of the acts of the prisoner, or of any other with whom he is attempted to be connected, concurring together at the same time and for the same object. And here, says Mr. East, the evidence of a conspiracy is more or less strong according to the publicity or privacy of the object of such concurrence, and the greater or less degree of similarity in the means employed to effect it. The more secret the one and the greater coincidence in the other, the stronger is the evidence of conspiracy. 1 East, P. C. 97 (1)."

Hosted by Google

Article IV charges the respondent with entering into a conspiracy with one Patrick.

[Mr. Manager Grosvenor read Art. IV, as follows:]

"That said Charles A. Edmonds, Commissioner of the State Land Office, unmindful of the high and responsible duties of his office, and of his oath of office, on the first day of June, 1871, in the said Land Office, at Lansing, in the county of Ingham, and on divers other days and times during his official term at Lansing, aforesaid, did unlawfully conspire with one William G. Patrick, and divers other persons unknown, fraudulently to withhold from sale, and mark, or cause to be marked as sold, large quantities of State lands, for the benefit of said conspirators, in fraud of other *bona fide* purchasers and settlers, with the intent to cheat and defraud such *bona fide* purchasers and actual settlers, and all others who might wish to purchase the same.

"And in pursuance of said conspiracy the said Charles A. Edmonds did mark, or cause to be marked, in said office, on the plat books thereof, as sold, large tracts of land that were not sold, by which Edmonds, his deputy, and clerks in office corruptly received large sums of money; and said Charles A. Edmonds, Commissioner of the State Land Office, was guilty of corrupt conduct in office, a violation of his oath of office, and a great fraud upon the people of this State."

Now, if this testimony tends to establish a conspiracy made as early as 1867, and we continue the said acts, or similar acts and transactions, down to the office of this respondent, and he, knowing the agreement between these parties connected with it from time to time, did consent to such an arrangement, continuing the same practices in his office, we say he has assented to the transaction, and is one of the conspirators. And this testimony is preliminary, and is brought to show establishment of the practice, as early as 1867, to withhold large quantities of land from the market for the benefit of whoever might have been concerned, and that the practice

Hosted by Google

then continued into his administration was indorsed and acted on by him.

Mr. Shipman—Mr. President, one object we had in calling the attention of the Senate to this matter was that they might see where we were drifting. We thought we were gradually going away from the proper constitutional boundaries, and it was proper to call attention to the old landmarks that we might see where we were being taken.

One object has been accomplished. Now this evidence is in answer to this question:

"What was the arrangement between you and Mr. Barnard in reference to the lands?"

Mr. President, if we are at all technical in this matter, or have been thus far so, we have done just what we did not intend to do. We have submitted to having questions put which were very leading, and the repetition of questions which had already been answered, and I might almost say gone as far as to have the answers put in the mouths of the witnesses; and have endeavored not to make technical objections. Perhaps we have failed, and are subject to the censure which the Honorable Manager has seen fit to impose upon us; if we have we will try and do better in the future.

Now, if they seek to show that lands have been withheld from sale, and the marks of Mr. Edmonds show it,—if you propose to show that he knew of this arrangement that existed in 1868 between Mr. Barnard and Mr. Bush,—we do not object to that question being asked. They do not propose to ask that, and we objected to their asking for facts which they do not propose to bring knowledge in some way to the respondent. It is quite evident that they do not propose to bring the knowledge home to the respondent. They are going to show a state of circumstances whereby he must have known it. We will give them the benefit of the doubt, and not shut it out; we will let in what occurred in his term of

Hosted by Google

office. Let us not take in what occurred before; we have got all we want to do to take what has transpired since.

In regard to the authority cited by Mr. Lawrence, in the American Law Register 644, it is the same as in the Benjamin Butler speech, in the first volume of the impeachment trial of Andrew Johnson, with the exception of a few instances. On the other hand, we find a brief against that position made by the Managers. They are in the House proceedings—the reports of the committee in the House—in the same matter There is also a brief made by Mr. Wilson in Iowa; a person who had no sympathy with Johnson, but exactly on the opposite side. Another brief will also be found, which is taken out of that, and published as authority.

I wish to call attention to this same book,—American Law Register, page 265, and you will find there an authority exactly the opposite. Without reading it, I will simply call attention to it and quote two lines: "While the irregular cases upon the subject are few, the rule that a true crime must have been committed, is settled beyond dispute."

The language in the article I have once before called attention to, prepared by Theodore W. Dwight as a lecturer to the Columbia College and Law School.

Mr. Manager Cochrane—What do you understand by *true* crime?

Mr. Shipman—I understand the words in their ordinary signification; that it means an offense,—an act prohibited by law, and which the law would not permit him to do.

Mr. Manager Cochrane—Under the statute?

Mr. Shipman—Yes, under the statute. Now, when you talk of corrupt conduct in office, that is another thing, and what is that? We can very easily get at it by looking at Bouvier's Law Dictionary, under "Corruption:" "An act done with the intent to give some advantage inconsistent with official duties and the rights of others."

The words crimes and misdemeanors, I think, mean crimes

Hosted by Google

and misdemeanors as they are understood by law. The objection to this question is, that it is too broad, it goes too far; it is not a matter that they propose to bring to the knowledge of the respondent, and, therefore, we object to it, leaving them to renew the question as to what transpired during his term of office. If they propose to connect him with it, we do not object.

The Presiding Officer—The question is, Whether the question proposed by Manager Huston be put to the witness? Those of you in favor of allowing the question to be put to the witness will, as your names are called, say Aye; those opposed, No. The Secretary will call the roll.

The Secretary called the roll, with the following result:

YEAS.

Mr. Alexander,	Mr. Jenks,	Mr. Sheley,	
Ball,	Mann,	Stoddard,	
Begole,	Moffatt,	Storrs,	
Dexter,	Neasmith,	Waterbury,	
Gay,	Putnam,	Wheeler,	
Hannahs,			16

NAYS.

Mr. Barber,	Mr. Romeyn,	Mr. President	
Briggs,	Stockbridge,	*pro tem.*,	
Price,	White,		
Prutzman,	Wilcox,		9

The Presiding Officer—The yeas being 16 and the nays 9, the objection is overruled; the question may be asked.

W. C. BUSH, RECALLED.

William C. Bush recalled and examination continued by Mr. Manager Huston:

The Presiding Officer—The Secretary will read the question.

The Secretary read the question as follows:

"What was the arrangement between yourself and Mr. Barnard in regard to the land?"

Witness—In the fall of 1867 and the winter of 1868, I had an arrangement to look over 19 and 20 north, 3 west.

Hosted by Google

Q. What was the arrangement?

A. Those arrangements—that was the first I had in the Land Office—I was to look over the land and report the same.

Q. Report to whom?

A. To Mr. Barnard, and I did so.

Q. What was the arrangement about entering the land, if any?

A. Well, I had nothing to do with the lands. All I was to do with those lands was to look them and report.

Q. That was all the arrangement you had?

A. Yes, sir. That was all the arrangement that I had,—that I was to be paid for.

Q. Did you have any arrangements subsequent to that time?

A. I had some small lots to look in different places in the State.

Q. Can you state when?

A. I had some small doings in the summer of 1868.

Q. Whereabouts were those lands that you looked in 1868?

A. My recollection don't point to any other. I looked at some small parcels where I had other work to do. I don't remember any amount of any other transaction until 1869 or 1870.

Q. In 1869?

A. In 1869 and '70 I was to look up a tract ranging from 8 north to 12 north, and from 1 to 10 west.

Q. Well, did you look them up?

A. I looked them up and reported on a few, and I didn't get any pay as agreed, and I sold the balance.

Q. Who did you report to?

A. I reported to Mr. Barnard.

Q. Will you look at that letter [showing witness a paper]? Do you know the handwriting?

A. Yes, sir, I do.

Q. Whose is it?

Mr. Manager Huston—I desire to introduce, Mr. President,

Hosted by Google

this letter in evidence. It is dated January 31st, 1871. If there is no objection, I will read the letter.

The letter is as follows:

[EXHIBIT D.]

MICHIGAN STATE LAND OFFICE,
Lansing, Jan. 31, 1872.

W. C. Bush, Esq., Saginaw City, M.:

D'R SIR—Yours received. The land on sec. 22, 18 N., 2 W., and the N. W. ¼ of N. W. ¼—22—18 N.—2 W., has been applied for by E. Hall,—so you cannot get it.

I have your 17 tax deeds here, with $6.15 charges. What shall I do with them?

I do not want Mr. Ripley to have anything on the plats I gave you east of Saginaw.

Look everything carefully along the Port Huron and Flint R. R., and in Lapeer and Tuscola counties.

I want everything that is worth taking,—all reserved lands, licenses, or forfeited lands.

I want 4,000 acres, if you can find that amount, and will see that you are paid for looking, if you will come here directly after looking, and keep away from Ripley.

Yours truly,
WM. A. BARNARD.

Q. [Showing witness another letter.] Are you acquainted with the handwriting in that?

A. Yes, sir.

Q. Whose is it?

A. Mr. Barnard's.

Mr. Manager Huston—Here is another letter of Mr. Barnard's that is also in 1871, that I offer and will read. The letter is as follows:

[EXHIBIT E.]

STATE OF MICHIGAN, STATE LAND OFFICE,
Lansing, April 17, 1871.

W. C. Bush, Saginaw City, M.:

D'R SIR—I send, to-day, plats of the Alpena country,

Hosted by Google

for all towns I think worth looking, with lands once reserved or applied for checked in blue.

I wish you would look each town carefully for scattering lots of pine; if you can get eight hundred or a thousand acres, I can reserve it on contract until we can sell it, and make something out of it. Do not sell to any one in Alpena —report direct to me.

E. Hall says he shall probably see you again soon in Saginaw City, and will talk with you again about the 18-2 lands. Can you locate, anywhere in the State, 3,000 acres of good black ash lands? If so, we can sell it. Let me know at once.

Very truly,

W. A. BARNARD.

Q. [Showing witness another letter.] Whose handwiting is that?

A. Mr. Barnard's.

Mr. Manager Huston read the letter, as follows:

[EXHIBIT F.]

STATE LAND OFFICE,
Lansing, March 6, 1871.

W. C. Bush, Esq., Saginaw City, M.:

D'R SIR—Yours of Saturday, with proof, etc., received. I have made application for the two forties in 7-14 E.; will send patents as soon as I can get them.

Mr. Hall was here Saturday and consented to hold the two forties in 18 N., 2 W., and the fraction in 19 N., 2 W., until he could see you and make some arrangements with you for them. He said he would keep them until he saw you, and talked of trying to get some descriptions of you that he thinks you own.

Very truly,

W. A. BARNARD.

Q. [Showing witness another letter.] Whose handwriting is that?

A. Mr. Barnard's.

Mr. Manager Huston read the letter, as follows:

Hosted by Google

[EXHIBIT G.]

STATE OF MICHIGAN, STATE LAND OFFCE, }
Lansing, April 25, 1871. }

W. C. Bush, Esq., Saginaw City, M.:

D'R SIR—I have had the lands in 11 N., 12 E., reserved for you in E. Hall's name, so you can sell them if you wish.

I cannot possibly raise any money at present to help look the Alpena land. E. Hall thought if he could see you he could make some arrangement with you, and wished me to say that he would furnish you money for expenses, if the land was properly looked and reserved on his contract. I might perhaps get you some scrip to apply towards looking the land, or you might sell some of the Tuscola lands to raise means.

Very truly,

W. A. BARNARD.

Q. [Showing witness another letter.] Whose is that?

A. Mr. Barnard's writing.

Mr. Manager Huston read the letter, as follows:

[EXHIBIT H.]

STATE OF MICHIGAN, STATE LAND OFFICE, }
Lansing, June 31, 1870. }

W. C. Bush, Esq., Sag. City, Mich.:

DEAR SIR—I received your letter Saturday, but have been out of town until to-day. I find that the taxes on S. E. ¼ of S. W. ¼ 15,—17 N. 4 W., have been paid. Your patent for the 80 will be ready to-morrow, and I will try and send your plats with it. I will try and sell the 10 N.—7 W. lands, or you get some one to furnish scrip and locate them with me,—if so I will make it all right with you.

If I locate them I shall want to do it in your name, and have you assign the certificates.

Yours truly,

W. A. BARNARD.

Q. [Showing witness another letter.] Whose handwriting is that?

A. Mr. Barnard's.

Hosted by Google

Mr. Manager Huston read the letter, as follows:

[EXHIBIT I.]

STATE LAND OFFICE,
Lansing, March 19, 1870.

W. C. Bush, Esq., Saginaw City, Mich.:

DEAR SIR:—I inclose diagram of Sec. 16,--14 N., 4 E., and wish you would look it for me and see if it is good.

It is near the plank road and I think there is a road on the west side of the section—and there has been some inquiry about it lately—look it and tell me which is the best. I have marked that—that is vacant—and think it is *good farming land.* If so, I want the best of it—look it as soon as you can.

I will send you plats of licensed lands east of Saginaw by the time you get the fo'f h't lands near St. Charles looked.

There is considerable is 13, 6 E., that ought to be good.

Yours truly,

WM. A. BARNARD.

Q. [Showing witness another letter.] Whose handwriting is that?

A. Mr. Barnard's.

Mr. Manager Huston read the letter, as follows:

[EXHIBIT J.]

STATE LAND OFFICE,
Lansing, December 7th, 1870.

Wm. C. Bush, Saginaw City, M.:

DEAR SIR—I enclose plat of 9 N., 1 W., Gratiot county, showing names on licensed lands, and lands ruled red reserved by Nichols Peacock, and land ruled blue reserved by Luther Smith.

These lands are black ash bottoms, and will be valuable for timber and for farming. I want them carefully looked, so you can tell me which is the most valuable.

If you can go *at once* and look them, I wish you would do so and report directly to me, and we can make something out of it.

Hosted by Google

The west part of town—say sections 5, 6, 7, 8, 17, 18, 19, 20,—have never been surveyed; but I think if you have a good compass, you can run the land out near enough yourself. Look everything on the plat. Write me when you will be able to go. If you know of any swamp lands that you want reserved for yourself,—two or three months,—send description and I will hold them for you. I have an arrangement with E. Hall.

Very truly,

WM. A. BARNARD.

Q. [Showing the witness another letter]—Whose handwriting is that?

A. Mr. Barnard's.

Mr. Manager Huston read the letter, as follows:

[EXHIBIT K.]

STATE OF MICHIGAN, STATE LAND OFFICE,
Lansing, February 10, 1871.

W. C. Bush, Esq.:

DEAR SIR:—I enclose plats showing everything in the ranges you left here. There is not much north of 16 but vacant land,—except in 19 N., 6 W. I find about 400 acres reserved to E. L. Gray, that I think you better look. I think I can get it; also, some in 19 N. 7 W.,—it is good. Come here yourself with it, and I will tell you how to apply for it.

Yours truly,

W. A. BARNARD.

Q. [Showing witness another letter.] Whose handwriting is that?

A. Mr. Barnard's.

Mr. Manager Huston read the letter, as follows:

[EXHIBIT L.]

STATE OF MICHIGAN, STATE LAND OFFICE,
Lansing, March 22, 1870.

W. C. Bush, Esq., Sag. City, M.:

D'R SIR:—I have just received your letter. The two forties in 13 N. 9 W. are marked to Ripley—all right.

Hosted by Google

I enclose diagrams of 13 N., 6 E., and 14 N., 6 E., reserving quite a number of *old licenses* (40 acres each), under the old law. I did not have time to put in the names, but do not think many of them are settled. If you look them, come here and make the proof. Then you can tell which you can get, and will have no trouble with Ripley. You should give him no list or descriptions, until you have been here and found the lands subject to sale, and all right on our books.

Ripley will get nearly everything in the lists you have already furnished him.

Yours truly,

W. A. BARNARD.

Q. [Showing witness another letter.] Whose handwriting is that?

A. Mr. Barnard's.

Mr. Manager Huston read the letter, as follows:

[EXHIBIT M.]

STATE OF MICHIGAN, STATE LAND OFFICE,
Lansing, December 12, 1870.

W. C. Bush. Saginaw City, M.:

D'R SIR:—Your dispatch came this morning, and the lands in 15 N. 5 W. will be reserved for you, all right. I enclose plats of the lands in 15 N. 5 W. and 16 N. 4 W., with names of purchasers. Sell the land for what it is worth, if possible.

Yours truly,

W. A. BARNARD.

Q. [Showing witness another letter.] Whose handwriting is that?

A. Mr. Barnards.

Mr. Manager Huston read the letter, as follows:

[EXHIBIT N.]

STATE OF MICHIGAN, STATE LAND OFFICE,
Lansing, February 4, 1870.

W. C. Bush, Saginaw City:

DEAR SIR—I have received your letter of the 2d and 4th. Enclosed please find tax statement for the descriptions sent

Hosted by Google

me. You can purchase State bids on N. W. ¼ of S. E ¼ 25, 15, 6 W.

I send plats for all towns in ranges 15 and 16 north, that I thought good. There are considerable many late licenses that I did not think worth looking.

I was up to Bay City last Sunday and sold the 10 N. 17 W. lands. If the estimates are correct, the man is to pay for the minutes, or give us an interest in the land.

If you are going to sell the minutes for everything you look, I want to have some understanding with you before I put you on track of any more land. The lands in 11 N. 4 W. should not have been put in Ripley's list.

You have no proofs here for the lands in 11 N. 4 E, and some other descriptions that were in his list, and ought not to have given him the list as it was until it was perfected, and the lands in proper shape to be located.

I would like to see you, if possible, before you go into the woods again.

Yours truly,

W. A. BARNARD.

Q. [Showing witness another letter.] Whose handwriting is that?

A. Mr. Barnard's.

Mr. Manager Huston read the letter, as follows:

[EXHIBIT Q.]

STATE LAND OFFICE,
Lansing, July 1, 1870.

W. C. Bush, Saginaw City:

D'R SIR—I received your letter to-day and enclose plats with vacant lands and licenses marked in pencil.

If you can get scrip of Lathrop you better hold your plats until he gets his *contract accepted so he can reserve lands,* and then look the lands for yourself and Lathrop instead of Ripley.

I will help you locate the lands for an interest in the scrip.

I may possibly be in Saginaw City Monday,—if so, will try and see you.

Yours truly,

WM. A. BARNARD.

Hosted by Google

Q. [Showing witness another letter.] Whose handwriting is that?

A. Mr. Barnard's.

Mr. Manager Huston read the letter, as follows

[EXHIBIT O.]

STATE LAND OFFICE,
Lansing, May 25, 1870.

W. C. Bush, Saginaw City.

D'R SIR: I have received your letter enclosing proofs of abandonment.

There is nothing in Muskegon or Newaygo that I know of that is worth looking. I will look after the Board of Auditors get away, and I have more time for—Pine—and if I can find any, will send it.

Very truly,

WM. A. BARNARD.

Q. [Showing witness another letter.] Whose handwriting is that?

A. Capt. Barnard's.

[EXHIBIT P.]

STATE OF MICHIGAN, STATE LAND OFFICE,
Lansing, April 8, 1870.

W. C. Bush, Esq., Sag. City, M.:

D'R SIR—When the water gets down so you can go to 10 N. 4 E., I wish you would look at N. E. ¼ of S. E. ¼ 20,—and see if you can furnish proof so I can get it.

Look it so you can tell me about it when you come here to look *South* and *West*.

Yours truly,

WM. A. BARNARD.

Q. State whether you looked any lands in Tuscola, Lapeer, and Sanilac counties, and if you did, when it was?

A. I looked lands in Tuscola, Sanilac, and Lapeer, in the months of February, March, April, and part of May, 1871.

Q. In 1871?

A. Yes, sir.

Hosted by Google

Q. Who for?

A. Well, I looked the lands and they were reserved by Mr. Barnard, on E. Hall's contract.

Q. They were reserved by Mr. Barnard?

A. Yes, sir.

Q. What amount?

A. There was 1,940 acres, I believe, as near as I can recollect.

Q. Do you know whether those lands have been sold?

A. They have not.

Q. State what you know about their being reserved?

A. Well, I find them reserved this morning.

Q. How?

A. They are reserved at present.

Q. They are still reserved?

A. Yes, sir.

Q. State what you know in regard to whether there has been any patents issued for these lands to Mr. Hall or Mr. Barnard, or yourself.

Q. None that I know of.

Q. You say they are reserved this morning. How did you ascertain that fact?

A. I find them marked on the books as they were when I first had them reserved.

Q. Well, how are they marked on the books?

A. With a simple "H," representing Hall.

Q. What do you mean? Is that penciled on the description?

A. Penciled on the description.

Q. The lands that you looked in 1870,—what became of those?

A. Well, I could not say as to what became of the lands. The lands were looked and I made the report, and that is all I know.

Q. Let me call your attention to township 19 north and 7 west, and ask you what kind of lands you looked in that township for Mr. Barnard, and when it was?

A. Well, I looked those lands in the—

Hosted by Google

Q. [Showing witness letters.] If there is anything in this package of papers by which you can refresh your memory, you can use these.

A. I think I can refer to them. [Looks at papers.] Well, the first time I went on to them was in March, 1870.

Q. March, 1870?

A. Yes, sir.

Q. That is the land, in 19 north, 7 west?

A. 19 north, 7 west; yes, sir. I was on to them again in June, 1870,—May or June.

Q. What kind of lands were those?

A. Well, sir, they were pine lands.

Q. Of what denomination?

Mr. Shipman—Mr. President, we object to the further examination of this witness in regard to what took place in 1870 or before 1871. The ruling of the Senate was, as I understood it that they may prove the agreement back there, and then they propose to show what was done under that agreement in 1871, or since the Commissioner came in,—as I understand the offer. I do not wish to take up any time, however, and if I am wrong in this then the examination will be proper, but we object to it now with the light we have.

Mr. Manager Huston—Mr. President, I wish to say one word. It must be patent now to every member of this Court that this has not been a small transaction; and the evidence develops the fact that the nineteen hundred acres that we have called his attention to, in Tuscola county, that was located in 1871, or rather booked and reported to Mr. Barnard in January, February, March, and May, most of it over a year ago, is still reserved on the books in the office; when the law of this State says, that lands of that character that are reserved—as we shall show, if they were reserved properly,—if they were reserved upon contracts that have been completed,—it is the duty of the Commissioner to issue his patent within thirty days, and to notify the treasurers, that the lands might be assessed.

Hosted by Google

Now, we have shown, and we say now, that it is the duty of this Commissioner,—he is presumed to know what is upon the books of that office. Now, if we go on and show that these lands that were located before 1871 are still carried on the books in opposition to the law—contrary to law—and reserved by a clerk, in his interest, who has no right under the statute to be directly or indirectly interested in lands, I say that upon that presumption the Commissioner is bound to know what is upon his books; he is bound to know everything that appears there. It is perfectly competent—unless he can show by testimony that he has been deceived in some way—it is perfectly competent for us to follow up this transaction and show that these lands that were looked by this party—and certainly no one will claim that Mr. Barnard, who was a clerk in the office at that time, as the evidence shows, had a right to be interested in those lands—no one will claim that Mr. Barnard had a right to reserve those lands, against the interest of the citizens of the State; no member of this Court, nobody will claim but what this was all in violation of law. Now, if we can go on, Mr. President—

The Presiding Officer [interrupting]—Let me say to the Honorable Manager, that, taking the vote of the Senate as expressing their views upon this question, I shall overrule the objection. I will take a vote of the Senate if it is required.

By Mr. Manager Huston:

Q Well, will you state now, what amount that year, the number of acres if you can, that you reported to Mr. Barnard, in 19 north, 7 west?

A. [Witness refers to memorandum.] About 760 acres, or thereabout.

Q. Did you state the amount that you located in any other township from your plats, or that you looked and reported to Mr. Barnard.

A. Well, I could not. I looked a good deal and sometimes I looked part of a tract and did not finish it,—did not look the whole,—reported as no good.

Hosted by Google

Q. Let me call your attention to school lands near St. Charles. Did you look there?

A. I think there is no school lands near St. Charles that I looked. There is one "forty" near Birch Run, I think that is.

Q. [Showing witness a letter.] The land referred to in that letter,—did you look that for him?

A. Yes, sir.

Q. Where is that?

A. That is a little northeast of Bay City, or north of Bay City.

Q. How many acres?

A. Well, it was part of a school section; I don't remember exactly how much it was.

The Presiding Officer—The witness *must* speak louder. There is too much confusion in the chamber.

The Witness—I don't recollect, exactly, the amount there was in the section; there was some fractional pieces.

Mr. McGowan—Won't you give the date of that letter that you refer to, that we may identify it?

The Witness—March 19th, 1870:

By Mr. Manager Huston:

Q. These lands in 11 north 12 east; what can you say about that? [Showing witness another letter.]

A. Those are some lands that I applied for myself.

Mr. McGowan—Give the date of the last letter?

The Witness—April 25th, 1871.

By Mr. Manager Huston;

Q. [Showing witness a paper] The letter you have in your hands?

A. December 7th, 1870.

Q. State whether you looked any of those lands, and what ones?

A. I looked the biggest share of those lands.

Q. How many acres?

A. Well, I don't recollect how many acres there was.

Hosted by Google

Q. Well, as near as you can approximate it?

A. There was some two or three thousand acres.

Q. Did you look those lands that were selected by E. L. Gray, or reserved?

A. I looked those lands,—yes, sir.

Q. Where were they?

A. 19—6.

Q. What is the date of that letter, [showing witness a paper]?

A. It is February 10, 1870.

Q. 19—6? How many acres was there?

A. I think there was some three or four hundred acres.

Q. What does Mr. Barnard mean in that letter, if you know?

Mr. Shipman—Mr. Huston, are those the letters that have been offered in evidence?

Mr. Manager Huston—These are the same letters,—yes, sir.

Q. What did Mr. Barnard understand,—or intend to have you understand,—by saying, after you had looked this land of Mr. Gray's, that if you would come here he would tell you how to apply for them? Did you learn from him afterwards what he meant by it?

A. No, I did not understand it.

Q. You do not understand what he means by it?

A. No, sir. I suppose that he showed me the form of application I would have to make to get the land.

Q. What kind of lands were those?

A. Pine lands.

Q. Do you know whether they are reserved yet, or not?

A. No, sir, they are not reserved.

Q. What became of them?

A. They were sold that year.

Q. Who sold them?

A. I could not say, only from hearsay.

Q. Did Barnard tell you who sold them?

A. My recollection is that I first heard of them outside of Barnard.

Hosted by Google

Q. Did Barnard tell you whether he had sold them or not?

A. I could not say that he did. There was some one in his place the first time I came to his office after they were sold. There was some one occupying his place.

Q. Lands 19 N., 7 W.,—what became of those?

A. Those are the ones I am just speaking of. I do not know what became of 19–6 west.

Q. I see in one of these letters, Barnard refers to having gone down to Bay City and sold some lands in which you were to share. What lands were those?

A. That was what I understood to be the 19–7 lands.

Q. That he had sold?

A. That is what I heard.

Q. State what lands you understood he referred to?

A. Those 19–7 lands.

Q. Did you ever look any lands for him in what he calls in one of his letters the Alpena country?

A. I started to go, and got there; but I cut my foot very badly, and was laid up for about six weeks.

Q. When was it you went there?

A. In May, '71.

Q. Did Barnard, in any of his talks with you, in regard to these lands, explain to you how he would arrange it to hold the lands?

A. He talked to that effect several times.

Q. What did he say?

A. He would get the consent of the contractors and use their names and their scrip, in order to hold the lands.

Q. State how you received these letters?

A. Through the postoffice.

Q. By due course of mail?

A. Yes, sir.

Q. What was the arrangement between you and Barnard, if any, with regard to the expenses of looking these lands?

A. We were to divide the expense between us.

Hosted by Google

Q. What was it, with regard to your time?

A. That was to come out of the lands.

Q. What was the arrangement about issuing deeds or certificates of purchase, or was not there any?

A. There was no arrangement.

Q. What was the arrangement really with regard to lands?

A. They were to be held and sold; whoever bought them they were to be patented to.

Q. There were not to be any patents issued until they were sold to some parties?

A. No.

Q. I will call your attention now to a description of land and have you tell me what you know about it: The west half of the northwest quarter of sec. 7, town 19 north, 2 east?

A. That is the description I applied for last spring, in April.

Q. Where did you apply?

A. I applied for it by letter, in the first place, to the State Land Office, and I afterwards came to the office and found it marked up on my account.

Q. When was it that you came to the office and found it marked up?

A. It was in June, '71.

Q. To whom did you apply then?

A. I applied to Mr. Barnard.

Q. What was the conversation, if any, between you and Barnard in regard to this piece of land?

A. I spoke to Barnard with regard to the land; told him I had sold the lands and then had an order come for the patents. I had sold those and a lot of others to Hall, and it might be a few days before Hall would send for them, and I asked him if my account was all right.

Q. What do you mean by your account?

A. I was holding lands and had orders there.

Q. Orders for what?

A. For land, or scrip.

Hosted by Google

Q. Matured or unmatured scrip.

A. Mine, there, was unmatured at that time.

Q. What did Barnard say?

A. He looked over and told me it was all right, as far as he could see. I told him it was not all right. I had some more due me, and I would deposit it.

Q. What did he say?

A. He said it was all right; that my account was all right, there.

Q. What more do you know about that land?

A. Hall applied for the patents very shortly after, and received answer that the land had been patented to somebody else.

Q. To whom—I am asking now with regard to knowledge you have ascertained from the office—whom have you been told at the office the lands were patented to?

A. John B. Dwynell, Mason.

Q. Have you had any talk with Barnard on this subject, since the lands were patented to Dwynell?

A. Yes, sir. Since I got word from Hall that he had not got them, I came here. Mr. Barnard looked the records over with me, and my name was erased from the books. There was nothing left to show they had ever been reserved to me before. Barnard turned me over to some clerk, and it took him about two hours to try to convince me my account was not right.

Q. What did Barnard say?

A. That there must be some informality somewhere.

Q. Did you talk with Edmonds about this matter?

A. Not at that time.

Q. Since?

A. I do not think I have.

Q. Did you ever apply to the Land Office during Edmonds' administration, for any licensed land, licensed to actual settlers. If you did, state when it was, and what there was about it?

Hosted by Google

A. I applied to Edmonds. I think it was in June.

Q. Last June?

A. I am pretty certain it was last June I applied to him for a decision on licensed land,—where the lands lie remote, where we could not get any affidavit of non-settlement or abandonment, for a decision as to whether they could be got any other way, but by filing that proof. There were some that were licensed as far back as 1859, '60, and '61. I made this application in company with H. C. Ripley, from East Saginaw, for a test case. We had three or four different descriptions, some in 1861 and some in 1859, that were not settled on at all, that lie remote from settlers, where we could not get any affidavits; and we first applied to Robinson, one of the clerks. He took our application, our names, and the dates, and then referred us to Edmonds, and Edmonds talked the matter over with us some, and he claimed that he had been in the office but a short time and he would leave it to Porter, and Porter would do as he had done heretofore, or do as he saw fit, at that time.

Q. What was the result?

A. Porter denied our claim. He said he thought it would lay open a great many settlers that were innocent.

Q. Why did he deny your claim to any of the lands?

A. He thought if he granted our wish, he would have to everybody else, and it would make a great deal of trouble, and wrong a great many settlers.

Q. Did you apply without proposing to introduce proofs?

A. Yes, sir.

Q. Without proof of non-settlement or abandonment?

A. Yes, sir.

Q. Was that the ground?

A. Yes, sir. We had a great many cases; and we brought two or three cases for test cases, to have them tried; and we came here for the purpose of getting his decision on that.

Q. That was while Mr. Porter was in the office?

A. Yes, sir; Porter was Deputy at the time; so he informed me.

Hosted by Google

Q. How many plats did Barnard send you at the time he wrote you the letter that bears date the 25th April?

A. Somewhere in the neighborhood of between 40 and 50.

Q. What did you pay for those plats?

A. I did not pay anything for them.

Q. Did you pay for any plats he furnished you during the year 1871? Did he furnish you any others in 1871?

A. I think I did get some few scattering, single plats.

Q. What was the arrangement between you and Barnard with regard to these plats, whether they were to be paid for?

A. All there was said was, when I wanted plats to send for them and I would get them.

Q. Did Barnard, or any one else in the office, call upon you for payment, at any time?

A. No, sir.

Q. I wish to call your attention to your testimony last Friday, about that date. I understood you to say it was on the first of May that you went into the office and demanded a patent for Mr. Allison of those lands in sec. 16, town 32 north, 2 west. On reflection, wlll you state about the date?

A. I wish to correct that. I made the written application on the 30th of April, about noon.

Q. Where?

A. The application was at the Land Office when I deposited the money for the land, the 30th of April.

Q. Last April?

A. Yes, sir.

Q. You said these letters were received by due course of mail?

A. Yes, sir.

CROSS-EXAMINATION OF R. C. BUSH.

Cross-examined by Mr. Shipman:

Q. How long have you known Barnard?

A. Since the fall of '67.

Q. How long have you lived in Saginaw City?

A. It has been my home for fifteen or sixteen years.

Hosted by Google

Q. What has been your business during that time?

A. I have generally worked in the lumbering woods up to 1866.

Q. What doing?

A. All parts of logging.

Q. And since 1866 what has been your business?

A. I have been in the woods looking and re-looking lands.

Q. A land-looker?

A. Yes, sir; generally termed a land-looker.

Q. What is a land-looker?

A. A person to go and examine lands, and report whether they are swamp lands or dry, pine lands, beech or maple; the quality and quantity.

Q. Up to 1871, for whom were you looking lands?

A. A great many parties.

Q. Whom?

A. I have been some for Mr. Ripley, and I have been some for the Paynes, and some Eastern parties that I have not the names of.

Q. Since January, 1871?

A. Some for Payne, and some for Perry, Pierce & Co., Chicago.

Q. Who else?

A. I believe that is all.

Q. Did you use to enter lands yourself?

A. Yes, sir.

Q. When you were employed to look up particular lands for these parties, they paid you for doing so?

A. Yes, sir.

Q. Since January, 1871, have you been employed by Mr. Barnard?

A. I will correct a mistake. Since 1872 I have been for Payne & Pierce, of Chicago; since 1871 I have done some work for Mr. Barnard.

Q. Under the old arrangement, made before that time?

A. Under the same arrangement. I was to look the lands

Hosted by Google

and get half of what we made and take half the land, and he was to pay half the expenses.

Q. That was the arrangement in 1870 and 1869?

A. We made this arrangement last spring again. Every time we took a new lot.

Q. What time did you make the arrangement with Barnard, and where?

A. It was in the Land Office, last winter—a year ago this last winter—the winter of 1871.

Q. State exactly what that arrangement was.

A. I was to look the lands.

Q. State what was done.

A. I cannot state all that was said.

Q. On that subject?

A. Simply to the effect that I was to look the lands, he would enter them, and we were to pay the expenses between us. That is, the expenses,—not the time.

Q. Were you to enter them in your own name?

A. No, sir. He was to do the entering, and I was to do the looking.

Q. You speak of Hall's contract. They were to be reserved on his contract?

A. That was the understanding.

Q. Did n't he have a contract?

A. Yes sir.

Q. Calling for land not finished?

A. So I understand.

Q. Do you recollect anything of the date of that arrangement you had with Barnard there?

A. I think I could get the date.

Q. Did you keep the dates of all these little conversations?

A. I kept a memorandum of the occurrences, right along, the year around. I can get the time, and the time I was at Lansing. I have a memorandum of making such an arrangement.

Hosted by Google

Q. Were you down more than once during that year?

A. I think I was, sir. I was down here several times.

Q. Give me the dates of the times you were down?

A, I was down here the 3d of March, 1871.

Q What other date?

A. The 5th day of April, 1871.

Q. Can you state any other dates? What I am after, is the date of the conversation with Barnard in the office, in regard to your looking these lands,—any lands.

A. On the 29th of June, 1871.

Q. What date was it that you had your conversation in the winter?

A. It was between April and March, from the time I was there. We had the arrangement talked over in January.

Q. Did you talk about specific lands?

A. No, sir.

Q. Did you ask about lands in Tuscola, Lapeer, or any other county?

A. We talked about the Alpena lands after we had the Tuscola lands disposed of.

Q. When did you talk about the Tuscola land?

A. I cannot say.

Q. About the Lapeer lands,—was that in 1871?

A. It was the same time; the Tuscola and Lapeer land were embraced in one lot.

Q. About the Lapeer lands,—do you say that was in 1871?

A. Yes, sir, that was in 1871,—between letters and conversation.

Q. Do you recollect when the conversation was?

A. I do not, any more than I recollect our agreement; I could'nt say the date or day.

Q. The old agreement?

A. We had no agreement. Every time we had anything to do, we talked about our own accounts.

Hosted by Google

Q. You cleaned up the old matters, and made new arrangements?

A. We didn't clean up the old matters; we tried to make some way to clean them up.

Q. What was the arrangement in 1871 about the lands?

A. I was to look the lands and bear half the expenses.

Q. And he bear half?

A. He bear half—and return them here to him. He was to do the holding and reserving the lands.

Q. How were you to get your pay?

A. We were to get our pay out of the lands whenever they were sold.

Q. Those Tuscola and Lapeer lands were to be reserved under special contract?

A. Yes, sir; Hall's contract.

Q. They were reserved?

A. Yes, sir.

Q. You looked those?

A. Yes, sir.

Q. Those you found on the books as reserved,—this land?

A. Yes, sir, the biggest part of them; some were sold.

Q. Is that a completed contract?

A. I could not say that.

Q. Did Hall have an interest in those lands?

A. Not that I knew of then.

Q. Where was your money coming from?

A. My money was coming when the lots were sold or transferred to any one else; he was to hold the lands until such times as they were sold.

Q. They couldn't be sold without an order from Mr. Hall, could they?

A. I don't know as to that.

Q. When lands are held on a contract, don't you know that they couldn't be sold without an order from Mr. Hall?

A. There were lands sold there, that were marked to some one else.

Hosted by Google

Q. Don't you know that that was the rule of the office?

A. The understanding was, Mr. Barnard had a contract and had an order from Mr. Hall, and all it required was Mr. Barnard's word.

Q. I did not ask you about the understanding; I asked you, if that was the rule; I didn't ask you whether they lived up to it in this case?

A. I have had lands patented, that I didn't have an order for.

Q. You have done strange things; I am not asking you about that; I am only asking what it the probable rule?

A. I don't know.

Q. I supposed you knew when lands were held on a contract, whether or not they could be sold without an order from the contractor?

A. No, sir.

Q. This was in 1871, you say?

A. Yes, sir.

Q. And this ran back to 1867,—in 1868 and 1869. You say you looked some lands you did n't get paid for?

A. Yes, sir.

Q. For Mr. Barnard?

A. Yes, sir.

Q. When?

A. In 1869, 1870, and 1871.

Q. He went back on you, did he?

A. It seems he did.

Q. In 1868, 1869, 1870, what was Mr. Barnard's position in the office?

A. I believe it was draughtsman.

Q. He was a clerk in the office?

A. Yes, sir.

Q. Your correspondence was with Mr. Barnard?

A. My correspondence was with Mr. Barnard.

Q. You did n't write to General Pritchard?

A. Very seldom.

Hosted by Google

Q. Did you get any letters from General Pritchard?

A. I don't know that I got any from him at all.

Q. Did you get any letters from Pritchard about Mr. Barnard reserving the land?

A. None at all.

Q. Or Edmonds either?

A. None at all.

Q. Did you write to Mr. Edmonds about it?

A. No, sir.

Q. Did you ever say anything to Mr. Edmonds or Mr. Pritchard, about any arrangement of yourself with Mr. Barnard?

A. No, sir.

Q. Why did you not?

A. It was not my business to do so.

Q. Did you not know you had no business to be getting lands from a clerk in that way?

A. I did not know whether I had or not.

Q. Still you said nothing about it?

A. I said nothing about it.

Q. When you made this arrangement with Mr. Barnard, where did you make it?

A. It was done between the Land Office and the Lansing House, when I was in Lansing.

Q. Sitting on the fence?

A. Sometimes in a chair, sometimes standing up.

Q. It wasn't in the office, was it?

A. Very often it was.

Q. In 1871, where was that talk had,—in the office or out of the office.

A. The principal part, as far as my recollection goes, was in the office.

Q. I wish you would try and be a little more definite about that conversation, where it was and what it was?

A. Wherever we met we talked about the same matters. It it was in the Land Office, we talked about it; and if it

Hosted by Google

was in the Lansing House, we talked about it. It was the same thing.

Q. It seems to me then, you ought to recollect what was said.

A. There was a good deal said in a good many different places, and different times.

Q. You cannot recollect anything more definite than you now stated?

A. Nothing more than that I was to do the looking up the land.

Q. I see your business stopped about the 25th of April, 1871; that is the last letter I find. What was the occasion of that? You have no correspondence since then. What was the trouble?

A. I was here once about that time, and he had turned those lands he had over to Mr. Hall, and I was employed somewhere else. I made up my mind I could do better.

Q. You and Mr. Barnard?

A. Yes, sir.

Q. That was the end of your business?

A. That was the end of the transaction.

Q. Was not the attention of the Commissioner called to an application you made then for some license of land about that time?

A. There was some.

Q. There was something up of that kind?

A. Yes, sir, we had some correspondence regarding some licensed lands.

Q. Did you not, about the latter part of April, 1871, bring to the office affidavits of abandonment of land,—licensed land of your own,—in the old form adopted by General Pritchard?

A. Yes, sir.

Q. And is it not true that the Commissioner would not take them?

A. They were not accepted.

Hosted by Google

Q. Were you not informed that you must give an affidavit which must be certified by the supervisor?

A. I believe so.

Q. That you must get a certificate as to the responsibility of the parties who swore to the affidavit?

A. I believe so.

Q. Did you not admit that you could not do that?

A. I admitted that it was the next thing to impossible.

Q. You wanted to get the lands simply on your own affidavit, on the ground of abandonment or non-settlement?

A. Yes, sir.

Q. That was this test case you have been telling about?

A. No, sir.

Q. When did the last case occur,—since then or before? Perhaps I can refresh your recollection by the name;—can you remember the name of the licensee—was it the Diamond case?

A. No, sir; it was in 9 N., 10 E.

Q. That does not give me any information.

A. I don't recollect the name; it was something in the shape of Cunningham or Cummings.

Q. Do you recollect of you and Richards being interested in land of a settler named Diamond?

A. I do.

Q. The application for his license was made in 1867, was it not?

A. I believe so.

Q. Did you not, in January, 1871, attempt to get that land?

A. I think I did get it.

Q. You filed an application of abandonment of the land January, 1871?

A. I believe so.

Q. You think you got the land?

A. Yes, sir.

Q. Do you know whom you transacted that business with?

A. I do not know whom I filed it with, or whom the affida-

Hosted by Google

vit was made before. The affidavit on my part was made, and the land patented.

Q. Is this the affidavit, dated the 18th of January, 1871? [Showing a paper to witness.]

A. Yes, sir.

Q. You got that land?

A. Mr. Ripley got the land on that affidavit.

Q. There was some question about the truth of that affidavit.

A. I got a letter to that effect—that they claimed to have made a settlement, and lived on it.

Q. You wrote a letter about it?

A. Yes, sir.

Q. The transaction was for Ripley?

A. Yes, sir.

Q. Do you remember a letter from Barnard to Ripley?

A. Ripley showed me a letter from Barnard.

Q. Did you answer that letter?

A. I think I did.

Q. Was there an affidavit attached to Barnard's letter?

A. There was to the one that Ripley showed me.

Q. See if these are the papers,—your letter, Barnard's letter, and the affidavit attached.

A. I believe so.

Q. They claim you were mistaken with regard to that land?

Q. They claim something. I do not know what they did claim.

Q. They claimed you made a mistake?

A. Yes, sir.

Q. They claimed, in other words, that he never had abandoned it?

A. Yes, sir.

Q. The matter is in dispute as to whether the patent was rightly obtained?

A. I went there and made an application, and wrote an answer, and I have not heard anything of it since.

Hosted by Google

Q. You consider it settled, do you not?

A. I have not heard anything of it since.

Q. Is that any transaction you have been testifying to about land in which Barnard had an interest?

A. No. Barnard had no interest in that.

Q. No one but you and Ripley?

A. No, sir; no one.

Q. You say the lands mentioned in the letter of April 25th, 1871, you applied for yourself?

A. Yes, sir.

Q. Nobody else had any interest in the lands?

A. I applied for one piece of land in 1871, in 19–2 E., section 7 W., N. W. ¼.

Q. Nobody else had any interest in those?

A. No, sir; nobody had any interest in that?

Q. You say you looked for lands in 19–7 for Barnard in 1870, March, June, and May,—760 acres?

A. Yes, sir.

Q. Who had an interest in those?

A. The understanding was that we were to hold the lands and sell them and divide the profits between us.

Q. What has become of the lands?

A. I could not say. I know they were sold.

Q. That is a part of the unsettled account between you and Barnard?

A. Yes sir.

Q. You were asked with regard to what Barnard said in one of his letters as to your applying for the land when you came here, showing you how to apply. Will you state now what you understand the meaning of that expression to be?

A. That he was to show me what form of application I had to make to get the land.

Q. It was the simple form?

A. Yes, sir.

Q. Now, did you cut this business or your foot first, in May, 1871?

Hosted by Google

A. I was in the woods when I cut my foot; been there but a short time and had done but little.

Q. I want to know when your business with Barnard was ended,—before or after that time?

A. It was after.

Q. Did you not say a little while ago that it was before that time,—did you not state that you did nothing after the letter of April 25th?

A. I did this looking after that.

Q. You had no arrangement after that?

A. No, sir.

Q. What do you mean to say,—that it was after you cut your foot?

A. It was after the transaction of these Alpena lands. That was the last transaction between us.

Q. Was that in May, June, or April?

A. It was in May and June. I went up there in May, I think, and came back the last of May or first of June.

Q. I want to know whether this thing ended April 25th or whether it was continued after that?

A. The last was done after I came down, that was the last transaction in the business.

Q. When did you come down?

A. I got back to Saginaw June 17th.

Q. Which way did you go back?

A. That is when I got back from looking at the Alpena lands. I had not got through looking at them. I had been up there.

Q. I am now asking when you had your last arrangement with Barnard, here?

A. My last arrangement with Barnard was at the making of this Alpena arrangement.

Q. But it was ended about April 25th, '71?

A. That was the end of it,—the last time I saw him, after I came down here and reported to him, and talked the matter over, and there was nothing done about it. It was some time before I could get down here.

Hosted by Google

Q. Can you give any specific reason why you quit?

A. It was some time before I got around so as to do anything. When I did get around I had some other work to do, and I was kept busy during the season.

Q. That is one reason; were there any others?

A. That was the only reason I know of,—that I was kept busy and had all I could do.

Q. Did Barnard assign any reason why he stopped the business?

A. No, sir.

Q. None at all?

A. None at all. It was some time after I saw Barnard.

Q. Now, you speak about the north or the west half of 7-19-2 E.?

A. Yes, sir.

Q. You say you applied last spring for that?

A. Yes, sir.

Q. Is that last spring or the year before?

A. The spring of '71.

Q. What was there about it? I did not quite understand it?

A. I made application for the land.

Q. What kind of application?

A. I wrote to Barnard about the land.

Q, What was done?

A. I came down shortly afterward, and found it marked up as my letter called for.

Q. You had scrip here?

A. Yes, sir.

Q. It was marked up to you?

A. Yes, sir; it was marked up to me.

Q. Can you tell what month that was?

A. I cannot.

Q. Did you not say in June, '71?

A. The application was made earlier than that.

Q. You wrote earlier than that?

A. The application was made some time in April or May.

Hosted by Google

Q. June was the time you came down here?

A. June was the time I came down here.

Q. State what took place then.

A. Nothing more than the usual business.

Q. You said something about it. Please state what was said.

A. I looked the books, and saw my application was there in the proper form.

Q. Did n't you speak about your having any scrip here, and how your account stood?

A. One time in June, at the time I came here, I told Barnard that I had the land sold, and I asked him if he had it "marked up," in the proper form, and if it would hold it,—if my account was all right; for, if it was not, I had some more due me, and I would deposit it. And he said it was all right.

Q. You did not get that land?

A. No, sir.

Q. Who did get it? Do you remember?

A. I cannot give the the name exactly—yes, it was John P. Dwynell.

Q. Do you know why he got it?

A. I do not know.

Q. Can you state the reason?

A. It took them two hours to try and explain the reason, but they did not give any reason. They thought there was some informality in some way or other, but they could not tell me why.

Q. Did they not give you a reason for it?

A. They said there was some informality in some way.

Q. I would like to know the reason?

A. They did not have any reason. It must have been marked on the book carelessly, or was not carried up on the books in proper shape. I know my account was all right; for I withdrew at that time, an order for two hundred acres, after the land was gone. I withdrew it and returned it to the parties whom I got it from.

Hosted by Google

Q. Did Barnard claim that?

A. Barnard looked it over with me about an hour, and he turned it over to one of his clerks, and we investigated it further.

Q. What clerk?

A. I don't know his name.

Q. When was that?

A. That was directly after I got the notice from Hall that he had not got it,—that the land had been sold to some one else.

Q. Did Hall apply for the same land?

A. Yes, sir; I sold the land to Hall.

Q. Is that the same Hall you have been speaking about?

A. Edmund Hall.

Q. He had a contract there?

A. Yes, sir.

Q. Which he could not get?

A. He got notice it had been sold to Dwynell.

Q. You had no talk with Edmonds about it?

A. No talk with Edmonds. He was not there at the time; I did not see him, at any rate.

Q. I wish you would tell me when that test case was; if you will tell me the name I can find it.

A. I could not say the name. I remember the description and the town it was in,—some of them; I do not remember all.

Q. You did not get the lands on your proof?

A. We were not going to make any proof. We came here to find out whether it required proof, and whether we could not get them without proof.

Q. Do you know what shape the land was in in the office,—whether they filed a three months' proof or not?

A. We had two cases; one case where they had not filed the three months' proof, and one case where they had filed the three months' proof. We took the books and looked them over, and looked over some new ones there.

Hosted by Google

Q. Will you state when these cases arose? Give us the date of those cases, if you can?

A One of them was in '61, some time. I can tell by looking at the plat books in the office.

Q. Can you tell when the other was?

A. I can tell by looking at the plat-books in the office.

Q. I would like to know what time you made that application, unless you can identify the transaction in some other way?

Witness [after looking at his memorandum]—The 23d day of May, 1871.

Q. Some of those licenses were dated back as far as 1861?

A. Some in '61, and some as far back as '59.

Q. Those that were dated in '59 did not require three months' proof to be filed. Is that your recollection?

A. So we were informed.

Q. Now, you say the three months' proof was not filed in some cases. Was it in those cases that occurred in '61 in which there was no three months' proof filed?

A. We referred to some of those cases, and then we referred to some that occurred in '61.

Q. In which the three months' had or had not been filed?

A. In which the three months' proof had been filed, and I think there were some in which no proof had been filed.

Q. Are you clear on that proposition?

A. We came here for the express purpose of seeing which land, if any, we could get.

Q. How many cases did you have in all?

A. We had different townships; we had some east and some west that we looked over.

Q. How many?

A. We had different dates and different towns,—I think a dozen different cases.

Q. Were you not anxious to settle the question, whether the three months' proofs were necessary when they were entered previous to 1861?

Hosted by Google

A. We came with a particular understanding to inquire in reference to all the questions with regard to the land. If any at all could be got without a proof being required, we wished to know it.

Q. That was the 23d of May, 1871?

A. Yes, sir.

Q. You say you applied to a clerk, and was referred by that clerk to Mr. Edmonds, and Edmonds referred you to Mr. Porter?

A. Yes, sir. As Mr. Edmonds had not been in the office but a little while, he did not wish to decide it. He had not looked over the laws, andc ould not decide it.

Q. Where was Edmonds sitting?

A. In the front room of the old Land Office.

Q. Did you then go to Porter?

A. Porter came to us while we were looking the matter over.

Q. How long were you engaged with Porter?

A. We talked the matter over probably about fifteen or twenty minutes.

Q. Got out the files and looked at the cases?

A. Yes, sir.

Q. Did it not take you longer than that?

A. They had the cases there. Robinson had taken the days and dates.

Q. Where was Edmonds?

A. He was right there at the time Porter was there. He was there part of the time Porter was; then he left us.

Q. You say Porter made a decision in the matter?

A. He said he could not accept anything, only just present the simple question, either of non-settlement or abandonment.

Q. In all cases?

A. In any or in all cases.

Q. What kind of proof did he state?

A. The proof he then required—the new form.

Hosted by Google

Q. Got up by Edmonds?

A. Yes, sir.

Q. With two witnesses?

A. Yes, sir.

Q. Certified to by the supervisor?

A. Yes, sir.

Q. Did he make a decision in writing?

A. No, sir; he refused our application.

Q. Have you any papers with regard to that transaction at all?

A. No, sir; it was done verbally between us.

Q. Were you making up a case, trying to get some questions so you could get them before the court?

A. No, sir; we were just asking for their decisions. If we could not, we were going to drop it; but if we could, we saw a chance to figure.

Q. What was it about Gray's land, referred to in February 10th, 1870. What Gray was that?

A. I understand it to be E. L. Gray, of Newaygo.

Q. What was done about that land?

A. I made the report and they were sold to somebody afterward.

Q. You looked them, did you?

A. Yes, sir, I did.

Q. Who paid you for looking?

A. I have not been paid yet.

Q. Is that a part of the unsettled account?

A. Yes, sir.

Q. From the first of January, '71, down to June, '71, were you not in the employ of Mr. Ripley entirely?

A. No, sir, I was not.

Q. Were you in his employ at all?

A. I was in Ripley's employ.

Q. By the month?

A. No, sir.

Hosted by Google

Q. How?

A. I was getting so much for whatever I did,—so much an acre, or so much a lot.

Q. Did you work for anybody else during that time,—take any other job?

A. Not in '71. In the months of February, March, and April, I was in Tuscola, Lapeer, St. Clair, and those counties alone.

Q. Did you not in one of these conversations say you were in the employ of Ripley? Did you not so state to Barnard in the office?

A. No, sir; I never was in Ripley's employ, only he employed me just for a day or so. He sent me out, and when I got back the employment was ended.

Q. Now, these forty or fifty plats that you speak of, were these new plats or old ones corrected?

A. They were new plats.

Q. New?

A. Yes, sir.

Q. Who were they made by?

A. Well, I should judge they were made by Barnard.

Q. Barnard was the plat clerk, then, was he?

A. Yes, sir.

Q. You wrote to him for them?

A. Well, I did not write to him for them at all; it was his proposition that he would get them for me. I did not know what he was making.

Q. He proposed to do it, and then sent them to you?

A. He proposed to do it; made such as he saw fit, and sent them to me.

Q. Were they township plats?

A. Township plats.

Q. What would be the usual price of those?

A. About twenty-five cents apiece, so I am informed.

Q. How did he send them to you?

Hosted by Google

A. Through the mail,—no, sir, I will take that back. I got them out of his hands. He handed them to me when I was in the office.

Q. You did not pay him for them ?

A. No, sir.

Q. You say that you got some few scattering plats afterwards, in 1871 ?

A. Yes, sir; when I wanted plats I did as I always had before,—I wrote to him for the plats, and I think I got some; I don't recollect how many, nor what ones.

Q. Can you recollect any special one that you got on Barnard's account ?

A. Well, I can't now, but I might by referring to my plats and papers.

Q. Were you then acting for Barnard ? You and Barnard were not acting together at that time ?

A. No, sir.

Q. Did you not act for Mr. Ripley, or anybody else ?

A. I think I got them for myself.

Q. You and Barnard had dissolved, then ?

A. There was no dissolving. I quit.

Q. There was no formal notice published of dissolution ?

A. There was no more transactions between us,—that was all.

Q. There was a dissolution in fact, but no notice published of it ?

A. Yes, sir.

Q. Now, did you get them on Mr. Barnard's account, or on your own account; or was it some other matters in which he was not interested at all ?

A. When I wanted plats I would merely write for them. His instructions were,—anything that I wanted, to write, and I would get it.

Q. That was, what you wanted in matters pertaining to his business, or relating to the business carried on by you and him, was it not?

Hosted by Google

A. Well, anything in the office,—any lands reserved, or any plats, or anything of the kind that I wanted, I should write to him, and he would get it.

Q. But if you got them for Ripley, or anybody else, you was to pay for them, was n't you?

A. Well, I did not get any thing for Mr. Ripley.

Q. It would be outside of the partnership, would it not?

A. Mr. Ripley would get his own.

Q. Get his own?

A. Usually.

Q. Well, if you wanted it for individual matters you were to pay for it, were you not?

A. No, sir, I did not. There was no agreement to pay for anything.

Q. Now, Mr. Bush, was it the land that you was selling, or the estimates in regard to the lands, in this arrangement between you and Mr. Barnard?

A. Well, the arrangement was to sell them any way we could; if we could sell the minutes, we were to sell the minutes; if we could sell the land, we were to sell the land.

Q. You were to look the land?

A. I was to look the land.

Q. Was it not the information that you had about these lands that you was to sell, and not the lands themselves?

A. I was not always to sell the lands. The lands were to be sold between us. If he got a chance to sell them himself he did so, and if I got a chance to sell them I did.

Q. I know; but was not the arrangement mostly with reference to selling the minutes and information in regard to the lands?

A. Well, the understanding was that I was not to sell any without letting him know, first; would not sell minutes.

Q. But was not there an arrangement that you were to sell that information that you obtained about the lands?

A. No such arrangement that I know of.

Hosted by Google

Q. You were to sell that information, were you not, if you got a chance?

A. To sell whatever you might call it; either to sell the lands—

Q. Now, did not you let Mr. Ripley have some information in regard to the lands?

A. I let Mr. Ripley have some lands.

The Presiding Officer—The Senator from the Twenty-seventh sends the following question to be put to the witness. The Secretary will read the question:

The Secretary read the question, as follows:

"Question: At the time of the making of the affidavit in the Diamond case, was you in the employ of Ripley? If so, in what capacity?"

The Presiding Officer—The witness will answer the question.

The witness—I was not in the employ of Mr. Ripley. I looked this land for him, and sold the minutes to him. If that was in the employ, why, I was in the employ. I looked the lands up myself, and afterwards sold him the minutes, including this Diamond case.

The Presiding Officer—In the same connection is the following question, also sent by the Senator from the Twenty-seventh. The Secretary will read:

The Secretary read the question, as follows:

"If you was in the employ of Ripley, at that time, what consideration did you receive for your services in the matter?"

The witness—My fees that I let Mr. Ripley have all his land on? I was to get thirty dollars per "eighty."

By Mr. Shipman—Then I understand you to say, that you simply looked that land, and sold him the information about it?

A. I sold him the information,—yes, sir.

Q. You threw in the affidavit, then, did you?

A. Yes, sir.

Q. That was no part of the contract?

Hosted by Google

A. Well, it was a part of the agreement,—the land was to be cleared before I got my part fulfilled.

Q. Then you took the job of entering the land for him, did you not?

A. Well, yes, sir.

Q. Looking and making proper proof here, and getting these papers issued to him?

A. Yes, sir.

Q. Then you got your money?

A. Yes, sir.

Q How much a lot—forty dollars or twenty—did I understand you?

A. Thirty dollars.

Q. On forty, one hundred and sixty, or eighty?

A. Eighty; thirty dollars for eighty.

Q. Did you have that arrangement with him in regard to other licensed lands?

A. Well, I let him have some other lands at the same time.

Q. Mr. Barnard complained, you remember, in the letter of Feb. 4th, 1870, about the minutes that you got of the land; what does he mean by that?

A. I did not understand that, sir.

Q. In this letter of Feb. 4th, 1870, about your selling the minutes of the land to other parties?

A. Some that I should not have sold.

Q. He uses this language; I will read: "If you are going to sell the minutes of everything you look, I want to have some understanding with you before I put you on track of any more lands."

A. He gave a lot of plats, as I said before, ranging from 8 north, to 12 and 13, I think,—12 anyway,—and to 10 west, with the understanding that I was to look them and he would pay part of the expense, and we would sell them,—he would reserve them, and we would sell them whenever we could, and I had looked up one lot and reported and he did not pay the expense, —his part of the expenses,—and I did not feel like going on

Hosted by Google

any further, and I told him I would have to sell some and let some go,—sell the minutes of them; and next time I went out I sold what I could, the whole list, including everything, to Mr. Ripley, and he objected that there was some good ones in it that I ought not to let Ripley have,—that I had n't ought to.

Q. The lands in 11–4 ought not to have been put in Ripley's list. Are these the ones that you refer to?

A. Well, that is some of them.

Q. Now, at that time were you at work for Mr. Ripley?

A. Well, I let him have that list of minutes,—made arrangements with him to take that list.

Q. Did you get your pay for them of Mr. Ripley?

A. I got my pay for what he did get afterwards.

Q. Now, I find this further: "You have no proof here of the land in 11–4 and some other descriptions that were in his list, and ought not to have given him the list as it was, until it was perfected, and the lands in proper shape to be located?"

A. Yes, sir; well, the biggest part of those had been re-
been reserved lands. The lands that the objection was raised to,
served lands,—were not licensed lands; there were some
that were claimed. There was no proof, but when I came back
again, they found the proof of some of them. The proof was
was here, and mislaid, and I filed the proof of some of them.

Q. Now, was you not at this time working together, and getting up minutes or information in regard to lands, which were to be sold by Barnard?

A. Well, the arrangement, as I said before, was, if it was sold by him or I could sell them, either way, we were to sell the lands or the minutes.

Q. It was to sell the minutes, was it not, of the lands when the lands were in shape to be located by other parties?

A. Yes, sir, that was the arrangement.

Q. Now, in speaking about Mr. Allison, Mr. Bush, one question Mr. McGowan suggests to me. The lands that were re-

Hosted by Google

served on Mr. Hall's contract, were they not the information, —the minutes simply sold to Mr. Hall?

A. Well, the lands reserved on Mr. Hall's contract were the first looked, as the letter will show,—first looked by me to have them reserved by Mr. Barnard for myself, and for Mr. Barnard and myself.

Q. For Barnard and Bush?

A. Yes, sir.

Q. Now, the minutes,—were they not sold to Mr. Hall,—that information?

A. Mr. Hall got them; they were turned over to him, on what condition I could not say.

Q. That information was turned over to him?

A. Yes, sir.

Q. The minutes?

A. Yes, sir.

Q. He did not get that information of you; you did not sell him the minutes?

A. He got the minutes from me.

Q. He did get the minutes?

A. He made the application on my minutes,—Mr. Barnard did.

Q. Did you let Mr. Hall have the minutes?

A. No, sir; I did not let Mr. Hall have them. I don't know when they were transferred to Mr. Hall.

Q. What did you do with the information,—the minutes? Did you let Mr. Barnard have them?

A. I let Mr. Barnard have them.

Q. Don't you know whether they got into Mr. Hall's hands or not?

A. No, sir; I don't know whether they have or not. It was said that the lands were turned over to him,—he claimed them.

Q. Well, were the lands turned over, or the information about them?

A. I turned the information over to Mr. Barnard; that is all I know of it.

Hosted by Google

Q. Now about Mr. Allison. You acted for him in getting that piece of land this spring, did you?

A. I did.

Q. You applied on the 30th of April?

A. On the 30th of April, I believe.

Q. You applied for one forty, didn't you?

A. Yes, sir.

Q. There were five forties, were there not?

A. Yes, sir; there were five forties.

Q. Applied for by Mr. Hewitt, covered by an application that had been made some time before?

A. Yes, sir.

Q. As I understand the fact, the quarter-payment had been paid up by a check for these five forties?

A. Yes, sir.

Q. And you came on April 30th, and applied for the forty,—you made an application for only one forty?

A. That is all.

Q. You were refused, were you?

A. Well, they didn't refuse,—they took my application and they took the money. That is, I made my application to Mr. Robinson.

Q. What was done then?

A. And he took the money. The application he referred to Mr. Edmonds. I talked to him about it, and we had several talks over the matter; and I believe it was finally patented up to Mr. Hewitt on Hewitt's order.

Q. State what the decision was about that. You got some word about it,—what was it?

A. Yes, sir. Mr. Edmonds remarked that he had looked the case over, and would have to give Mr. Hewitt the privilege of making his selection to the amount of his deposit.

Q. In other words, he paid two hundred dollars there, and he would have to give him the right to select which forty that should apply on?

A. Yes, sir.

Hosted by Google

Q. Now, you had your applicaaion in there for one forty at at that time?

A. Yes, sir.

Q. Well, the selection was made after that, was it not, by Mr. Hewitt or Mr. Hewitt's agent, or the man by whom he was acting?

A. Yes, sir, I believe so.

Q. Who finally got the land?

A. A gentleman by the name of Thomas.

Q. Hewitt was acting for Thomas, was he not?

A. Well, I don't know how they were acting.

Q. That was your understanding?

A. Yes, sir.

Q. You saw Thomas then, didn't you?

A. Yes, sir.

Q. Did you see Hewitt?

A. I don't know that I saw Hewitt there at that time.

Q. Well, did they apply for the same forty you had applied for?

A. Yes, sir.

Q. Did that strike you as peculiar?

A. Well, no.

Q. You had mentioned the fact here as though it was something strange.

A. They had had information as to what forty we wanted, before.

Q. Oh, they had, had they?

A. Yes, sir.

Q. Where did they get it?

A. Well, Mr. Allison applied to Mr. Hewitt for that forty, and, I believe, offered him five dollars an acre for it.

Q. State what you know, now. Do you know how Mr. Hewitt or Mr. Thomas got the information as to what forty you had applied for.

A. How Mr. Thomas got the information?

Hosted by Google

Q. Yes, or Mr. Hewitt, either?

A. He may have got it in different ways.

Q. Do you know how they got it—either one of them,—not how they may have got it, but how they did get it?

A. Well, I think I told Mr. Thomas myself.

Q. Oh, that is it. That is the best way in the world to get it. So you told Mr. Thomas of it, did you?

A. Yes, sir.

Q. They did not get the information in the office,—Thomas and Hewitt did not?

A. I don't know as they did.

Q. Now, you told Thomas of that before or after you made your application?

A. Well, I told him that—well, I guess it was an hour before it was patented; somewhere near that. That was patented at two o'clock, and it was right away after dinner; patented between one and two o'clock, and I told him after dinner.

Q. Was that the first of May, or the thirtieth of April, you told him that?

A. It was the first of May, I think.

Q. Where did you tell him?

A. Standing right in front of the Land Office there.

Q. Not in the office, but on the walk?

A. On the walk.

Q. You gave him that information,—of the forty you had applied for?

A. Yes, sir.

Q. He hadn't made his selection at that time,—neither he or Hewitt?

A. Well, I don't know whether they had or had not.

Q. Did he say anything about it?

A. No, sir, he did not.

Q. Did he not say anything about it at all?

A. Well, he said he had the lands,—he had made applica-

Hosted by Google

tion for the lands, and he was going to have them,—that was what he said.

Q. Now, didn't he tell you that if you had applied for that forty he would go in and apply for it too,—make that same selection,—go and take that same one?

A. He did not; not anything to that effect.

Q. Didn't he tell you right there that he should apply for that same one, if it was the one you had applied for?

A. No, sir.

Q. Do you state positively that he did not?

A. I state positive that he did not.

Q. Did he state anything about it?

A. He said that he had applied for the lands, and was going to have them.

Q. Didn't he state that he had not made his selection yet?

A. He didn't state anything about his selection at all. He said he had two hundred acres there, and he was going to have them.

Q. You are clear about that, are you?

A. I am quite clear about that.

Q. Did'nt he walk right from you into the office and make his selection?

A. No, sir, he did not.

Q. Did'nt he tell you that he had applied for the information in the office there, and they told him they would not tell him what forty you had applied for?

A. I think I kept my eye on him for that particular purpose. I watched him and I did not see him go into the office right-away, nor did'nt see him speaking to any of the clerks.

Q. I did not ask you anything about your eyes,—your ears are all I am after.

A. Well, my eyes and ears both.

Q. What you heard him say. Did'nt you hear him say so in substance, or intimate to you, that he could not get the

Hosted by Google

information in the office as to which forty you had applied for?

A. No, sir, he did n't.

Q. Did n't you tell him what "forty" you had applied for then?

A. I told him what "forty" I applied for before he knew I had anything to do with the land. I told him I had applied for forty acres.

Q. Did you tell him the description?

A. Yes, sir, I told him the description before he asked me any question, or before he knew I had anything to do with the land.

Q. I am not speaking anything about the order,—I don't care anything about that. You did give him the information about the forty you had applied for?

A. I did.

Q. Then did n't he say he would make a selection of that same forty.

A. No, sir, he did not.

Q. He got the information of you?

A. Yes, sir.

Q. I was a little anxious where he got it, Mr. Bush, on that point.

A. Well, he got the information from that fact that that forty had been applied for, and from me.

Q. I inferred from what I have heard you say heretofore, Mr. Bush, that there was some information obtained in the office there that he knew what you had applied for. You did not mean to state that?

A. No, sir. I don't know as he received any information in the office.

Q. You say you watched him?

A. I watched to see whether he would make that application on what I had told him.

Hosted by Google

Q. Did he?

A. Not that I noticed.

Q. He happened to hit the same forty, didn't he?

A. Well, there was no hitting about it.

Q. He got it, did he?

A. He knew it as well as I did beforehand.

Q. Well now, he knew it after you had told him?

A. Yes, sir.

Q. Now, after that, he made an application for the whole, didn't he,—after you made application for the forty?

A. Yes, sir.

Q. But before you made any application, he had applied for that,—for the whole, hadn't he,—the whole of the five forties?

A. Well, I don't know as he had applied for it,—he had applied for it before, and I guess he got it on his first application.

Q. Didn't he file an application after that for the others,—full payment?

A. I don't know whether he did or not.

Q. Didn't he take them on full payment?

A. The others?

Q. Yes, sir.

A. No, sir. They were quarter paid.

Q. This one forty was full paid?

A. One forty was full paid, the others were quarter paid.

Q. Do you know whether there was any proof filed in regard to that?

A. Well, I was informed there was,—I did not see it.

Mr. McGowan—Mr. President, it is possible we may want to ask him some questions about these letters. There are several of them, and we have not time to look them over carefully. If there should be, we will ask the privilege of recalling him,—otherwise we are through with him.

The Presiding Officer—The hour of 12 A. M. having nearly arrived, the Senate, sitting as a Court of Impeachment, will take a recess untill two o'clock this afternoon.

Hosted by Google

Tuesday P. M., May 7, 1872.

The Senate met and was called to order by the Presiden *pro tem.*

The Sergeant-at-Arms made the usual proclamation.

Roll called: quorum present.

CROSS-EXAMINATION OF W. C. BUSH, RESUMED.

By Mr. Shipman—I understand you to say that Barnard never paid you any money on these matters?

Answer—I did get some money either in the fall of 1867, or 1868. That was the first work I did.

Q. I mean since January, 1871.

A. That was the first of our acquaintance. That was the first work I did.

Q. I inquire specially in reference to since January, 1871. I understand he had paid you nothing?

A. In one lot I had some tax-title deeds,—a small account spoken of in one one of the letters,—amounting to six dollars and some odd cents. He settled that, and that is the first amount I received.

Q. Was that charged up against you in your account at all?

A. I cannot tell you,—I do not know. I never saw any charges against me.

Q. You had some money there, had you,—six or seven dollars? In one of the letters he speaks of that. Some account, there I mean, charged against you?

A. Those were the charges for the tax-title deeds.

Q. That is the one he refers to in that letter?

A. Yes, sir, that is the one he refers to.

Q. Did Mr. Hall make any arrangement with you for getting these minutes?

A. He did not.

Q. Did he say anything to you about it?

A. He did not,—he has since. After they were transferred to Hall, I made application to him to know what arrange-

Hosted by Google

ment had been made for my interest in them, and he said none,—that they were all turned over to him.

The Presiding Officer—The Senator from the Second district sends the following, which the Secretary will read.

The Secretary read as follows:

"Did Mr. Edmonds know of the arrangement between you and Barnard?"

Witness—Not that I know of.

Q. You knew that Mr. Barnard turned over these minutes to Mr. Hall?

A. I did not know of it at the time.

Q. He informed you of it during the times we have gone over, did he not?

A. I do not recollect the time exactly he did inform me.

Q. He did some time between 1867 and this time?

A. Yes, sir.

Q. Did you and Barnard ever sell any land?

A. I had made arrangements to sell some.

Q. Did you make a sale of any?

A. I do not know whether Barnard sold any or not, any more than what he claims. There was one lot he claimed he sold.

Q. Did you and Barnard sell any lands together? That is the question,—not what you did or what he did separately?

A. I do not know that we sold any together.

Q. Did you know of any lands being sold at all that you looked?

A. I know of one lot that he said he had sold if my estimates would hold out.

Q. There was a contract to sell if your estimates held out?

A. He said they were sold, or spoke about their being sold, and asked me if my estimate would hold out.

Q. What land was that?

A. Some lands in 10 N., 7 W.

Q. Can you give a closer description than that?

Hosted by Google

A. I could not, without looking.

Q. To whom were they sold?

A. I was not informed.

Q. When was that?

A. I think it was in 1868 or 1869,—no, it was in 1870.

Q. Is that the only instance you know of?

A. That is the only instance I know of.

Q. Did you and Barnard buy any lands?

A. I bought some myself.

Q. You and Barnard together?

A. No, sir.

Q. You bought some land in which Barnard was interested, or how?

A. No, sir. No one interested but myself.

Q. I only mention land in which Barnard was interested?

A. No, sir.

RE-EXAMINATION OF W. C. BUSH.

Re-examined by Mr. Manager Huston:

Question. State whether the land in 19 N., 7 W., was sold by Mr. Barnard?

Answer. I could not say,—I was informed it was. I know it was sold.

Q. Now state all the facts in regard to the licensed lands,—the Diamond lands?

A. I went over that Diamond land, and looked it up, and filed the affidavit, and I got a copy of the affidavit before the supervisor.

Q. Where did you get that copy?

A. I was shown a copy by Ripley. Ripley got the copy.

Q. Was that after the land was located,—after the affidavit was filed?

A. Yes, sir, that was after the patent was made out. Ripley called my attention to it, and went straight back to the land to see if there had been a mistake.

Q. What did you find the fact to be?

Hosted by Google

A. I found, as I had seen before, that he lived across the road from the land, that there had never been any improvement made on the land, and he had never lived on the land; and I do not think he has lived there up to this time. I am pretty sure he has not.

Q. What did you find about the improvements?

A. At the time I made the affidavits there was a small burning on the corner, grown up with poplar and alder; it may be two and a-half or three acres. My affidavit was filed in the winter. That spring, after they found the land was sold, they cut that poplar down and hoed it up and planted it with potatoes.

Q. Was that planted to potatoes before they made their affidavit?

A. No, sir; there had never been anything raised on it that I could see, and it had never been cleared in any shape.

Q. When you looked lands for Mr. Barnard, as directed in these letters, he made an arrangement, as I understand you, that he would reserve the lands on contract?

A. Yes, sir.

Q. Will you state, if you know, whether these lands were charged up against those contracts or not?

A. I could not say that.

Q. What is it worth per acre to look lands?

A. It depends upon circumstances.

Q. Generally, what is it worth?

A. Lands are looked all the way from five cents to forty cents per acre.

Q. You spoke about estimates; what do you mean by estimates?

A. Giving the amount of timber, as near as a person could form an opinion of it, on the land.

Q. What kind of lands were those you looked for Mr. Barnard; what were they generally?

A. They were different kinds of lands that had been held at the office for some cause or other.

Hosted by Google

Q. Were they school lands or swamp?

A. They were all supposed to be State land.

Q. There are several different kinds of State lands?

A. Swamp lands generally.

Q. I want to call your attention to the Allison lands,—what you testified with regard to the $200. What did Mr. Edmonds say with regard to that,—whether it was $200 in money or a check?

A. It was a check.

Q. Whose check?

A. It was a check on Cyrus Hewitt.

Q. Did you see the check?

A. No, sir, I did not.

Q. Do you know of any other parties that were looking lands for Mr. Barnard, the same as you were? Did Mr. Barnard tell you of any one?

A. In conversation he has referred to J. B. Barr.

Q. Do you know where he lives?

A. No, sir.

A. Any one else?

A. W. S. Patrick,—generally called Bill Patrick.

Q. What did he say about Mr. Patrick?

A. All there was, there were certain lands that they were holding in their name,—same as he was holding them for me.

Q. Holding lands for Mr. Patrick and Mr. Barr the same as for you?

A. Yes, sir.

Q. At the time you had the correspondence with Mr. Barnard, what was his position in the office,—before 1871?

A. He was what they called a draughtsman.

Q. What was his position after 1871?

A. He signed his name as Deputy Commissioner.

Q. Between the first of January and the first of June, 1871?

A. I think he kept on as a draughtsman until he went into

Hosted by Google

the Commissioner's office as Deputy Commissioner; I am not positive of that.

Q. When was it that you received the last lot of plats from Mr. Barnard?

A. I think it was the same day I was down here with Mr. Ripley. I am pretty certain it was.

Q. On the 3d of May?

A. Yes, sir.

Q. When was it that you went up to Alpena together?

A. Shortly after that.

Q. What did you go up there for?

A. I was waiting for these same plats.

Q. Was that the time you got them?

A. Yes, sir.

Q. You returned from the woods on that account?

A. Yes, sir; I returned from the woods on that account.

Q. State what your practice was with regard to reporting lands, or whether you did report from time to time?

A. I always made a report directly, as soon as I got them, sometimes through letter and sometimes personally.

Q. Did you act upon these letters?

A. Generally; there were very few but what I did act upon.

Re-examined by Mr. Manager Cochrane:

Question—Did you, or did you not, ever have any contract with Mr. Barnard to look land, merely for the purpose of procuring the minutes for sale?

Answer—No, sir.

RE-CROSS EXAMINATION OF W. C. BUSH.

Cross-examined by Mr. Shipman:

Question—You received a great many other letters from Mr. Barnard than you have here shown?

Answer—Yes, sir.

Q. Something about your own business?

A. Yes, sir.

Hosted by Google

Q. About your own land,—about your scrip?

A. I think some of them are.

Q. You did not hunt up any lands under any arrangement to sell the minutes specially?

A. We looked them up to dispose of them at the best figure we could get, and the earliest opportunity. If we could get a good round figure for the minutes, we would let them go.

Q. You did n't sell any lands, I understand you to say?

A. I did sell some.

Q. You did n't sell any, did you?

A. I sold some, and when they got here to take them they were gone. He had sold them ahead of me.

Q. Now, did you *sell* any?

A. I do not think I did.

Q. Did you sell minutes?

A. I sold some minutes,—what I sold to Mr. Ripley.

Q. You reported to Mr. Barnard, you say, directly after looking at the land?

A. Yes, sir.

Q. That is the land you and he were looking together?

A. Yes, sir.

Q. You were looking for various parties?

A. Yes, sir, I was sometimes. When I did work for other parties I would have a job for him at the same time.

Q. You say Mr. Barnard spoke to you about holding land for Mr. Patrick and Mr. Barr the same as for you?

A. Yes, sir.

Q. When did he speak about that?

A. In a conversation.

Q. I suppose it was in a conversation, but when was the conversation?

A. It was at different times he spoke about Mr. Patrick and Mr. Barr. I looked some of Mr. Barr's land that he was holding.

Q. The conversation in which he spoke of holding lands for Mr. Patrick and Mr. Barr,—when was that?

Hosted by Google

A. I cannot give the date; it happened when I had been looking some lands he had been holding for Mr. Barr. I re-looked them.

Q. Can you tell the year?

A. It happened some time between 1867 and 1871. There were different lots.

Q. What Mr. Patrick was it?

A. The only name I got was "Bill Patrick."

Q. You say you know nothing about lands being charged up against contracts?

A. No, sir.

Q. Did you look this land that Messrs. Hewitt and Thomas got,—the Allison land?

A. No, sir; I didn't.

Q. In regard to the money for that land,—you speak about seeing the check. Have you any way of knowing whether the money was obtained on the check?

A. It was marked on the book "Check."

Q. Did you see the money on that?

A. I don't know that I did. I saw them handle some money when they said they were making out the patents for them. I don't know whether it was that or some other.

Q. Wasn't it said to be the money received on that?

A. I do not recollect.

Q. Did not they tell you, if that check did not bring the money, you could have the land. Did not Mr. Edmonds tell you so?

A. I believe not.

Q. Think not?

A. I went with Mr. Edmonds, from the Lansing House, on purpose to see that check. We waited for Mr. Robinson, and when Mr. Robinson came in he fetched the money. I was waiting to see it then.

Q. You were denied the privilege of seeing the check.

A. Yes, sir.

Hosted by Google

Q. How did yon know it was payable to order?

A. I saw a copy of it which Mr. Huston had.

Q. Did not Edmonds tell you, when he was coming down from the Lansing House to the office, that if the money was not received on that check, you could have the land?

A. I do not recollect as he did. He might have said so.

Q. Did n't he tell you that he had accepted that check in payment also, and held it there the same as cash?

A. Well, he said if that check was that shape that I represented, it would put a different feature on the case altogether He would go down and look at it.

Q. You claimed that you could not get the money on it, didn't you?

A. I claimed that it was not negotiable paper. I claimed he could not unless Mr. Hewitt was a mind to. He could not make him.

Q. That was the legal question that you and Mr. Edmonds were discussing?

A. Yes, sir.

Q, Now, was n't there talk that if he did n't get the money on it, that you could have the land? Was n't there some intimation of the kind?

A. Well, there possibly might have been.

Q. And when you got there, this money was there?

A. He was waiting,and he stopped right there and waited for Mr. Robinson.

Q. Did n't he tell you that he would send Mr. Robinson with the check, without saying a word about it?

A. He was here when Mr. Robinson got along there.

Q. And didn't he say that to you, that he would immediately send Mr. Robinson with the check?

A. No, sir.

Q. To that effect, I mean?

A. He said he would go down and look at the check, and see; and if it was in that shape, it would put a different feature on the case.

Hosted by Google

Q. In other words, if the check was payable to order, that you could have the land? Is that what you mean to have understood?

A. Well, he would go down and look at the check. He did not understand the check was drawn in that shape. He said that would put a different feature on the case altogether if the check was drawn in that shape. He would go down and look

Q. Didn't he say exactly the opposite,—that he did know the shape the check was in?

A. No, sir, he did not.

Q. Didn't he state so, repeatedly, there in the office?

A. No, sir, he did not.

Q. Had n't you raised the question there, before, that the check was not negotiable?

A. No, sir, I had not.

Q. Hadn't you called his attention to it?

A. No, sir; that day, noon, was the first.

Q. Did you go to Mr. Robinson about this check,—you and him together,—you and Mr. Edmonds together?

A. We went to Mr. Robinson about the check, at noon, and when Robinson came back, the first time we saw him, he came back with the money. We did n't see the check at all.

Q. For what purpose did you go to Mr. Robinson?

A. We wanted to see the check.

Q. Was n't he going to send Mr. Robinson to the bank with that check?

A. No, sir, that was not the understanding.

Q. Did n't he also ask Mr. Robinson, right there, how he got that check paid? and did n't Mr. Robinson reply that he simply presented the check at the bank, and it was paid?

A. I should think the first remarks were made,—that he said he would like to see that check, or he wanted to see that check of Hewitt's; and Robinson turned around and says, "There is the money," and walked inside; and that is the last of the conversation which I heard.

Hosted by Google

Q. Now, you had never seen the check?

A. I never saw the check.

Q. You saw a copy of the check in Mr. Huston's hands, did you not?

A. I believe I saw it in Mr. Huston's hands and Mr. Allison's hands.

Q. You saw it somewhere?

Q. Yes, sir.

Q. After that, you made application for the land?

A. Oh, I had my application already made.

Q. You had it made at that time?

A. Yes, sir.

Q. Before that?

A. Yes, sir.

Q. Was n't the ground upon which you made the application—based it—or one of the grounds, at least, that the check was payable to order, and not indorsed?

A. Yes; that is one of the grounds we insisted upon. That is the ground we stated to him at noon.

Q. Did you ascertain that until after you had seen the check, or a copy of it?

A. The first I heard of it was at noon.

Q. Did you ascertain that fact until you had seen the check, or a copy of it, how it was payable?

A. That was the first I knew of it when I saw it,—when I saw the copy.

Q. When you saw a copy of it?

A. Well, yes.

Q. If you based your application on that at all, you must have seen the copy before you made your application, didn't you?

A. Well, I had my application made at that time.

Mr. Manager Cochrane—I would suggest whether you had not got the wrong witness. There was considerable conversation had with Mr. Allison in regard to that check.

Hosted by Google

Mr. Shipman—I know it. I may have misunderstood him.

Mr. Manager Cochrane—Mr. Allison testified as to what you are aiming at here.

The Presiding Officer—Are the counsel for the respondent through with this witness?

Mr. Shipman—No, sir.

Q. I wish to call your attention to the evidence you gave in this matter, I think, on Friday: "Well, we had several conversations. I said that I didn't think his check ought to hold it; and another thing, his check didn't cover the whole, and as I had deposited the money for the part that I wanted, in full, I would like to have a patent for it." Now, at that time did you know in what shape the check was in?

A. Not at the time I made the application and deposited the money, I didn't.

Q. What was you referring to, then,—"that you didn't think the check ought to hold it!" What was you referring to?

A. Well, sir, I obtained that information afterwards.

Q. This conversation was when you made the application, wasn't it?

A. No, sir.

Q. Was it afterwards?

A. No, sir; the conversation was afterwards.

Q. Oh! I thought it was at that time?

A. No, sir.

Q. One question more, and that is, what do you mean by selling land? You speak about selling land. I have asked you two or three times if you sold any land, and you attempted to say that you did. Now what do you understand by selling land?

A. Well, sir, if I have any minutes of State lands, describing the location, the timber, and the general location of the land, if I sell this description, I call it selling land. If I own land, and get a deed for it and sell it, I call it selling land. It is all the same thing.

Hosted by Google

Mr. Shipman—Well, I thought so. That is all.

The Presiding Officer—Call your next witness.

TESTIMONY OF JOHN B. DWYNELL.

John B. Dwynell, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Huston:

Question. Where do you reside, Mr. Dwynell?

Answer. Near Mason.

Q. In this county, I suppose?

A. In this county.

Q. Have you purchased any lands of the State during the last year? If you have, will you state the description?

A. I don't know as I could state the description. I made application for a piece of land,—I think it was 19 north.

Q. Nineteen north, two east, wasn't it?

A. I could not tell.

Q. Would you know the description,—west half of the northwest quarter of section seven, nineteen north, two east?

A. No, sir; I should not.

Q. What did you pay for that land?

A. I didn't pay for it. I only made the application.

Q. Didn't pay for the land?

A. No, sir.

Q. Where was you when you made the application?

A. At home.

Q. At home in Mason?

A. Near Mason.

Q. Who did you deliver the application to?

A. I think I delivered it to Dunham, the platsman.

Q. Dunham, the platsman, where?

A. In the State Land Office.

Q. What time was this?

A. I could not state what time it was.

Q. Well, about a year ago?

Hosted by Google

A. Well, a year ago, or such a matter.

Q. About a year ago, you think?

A. Yes, sir.

Q. How came you to make this application?

A. At his request.

Q. Whose request?

A. Dunham's.

Q. Well, what did he say to you?

A. Well, now, I don't remember what he did say. My memory is very poor.

Q. Your memory *is* poor, is it?

A. I did'nt think enough about it to remember much about it.

Q. For whose benefit was this application made?

A. For Dunham's, I presume. I did not make any inquiries. It was not mine, at least.

Q. Did you know to whom the certificate issued for the land?

A. I think it was issued to me.

Q. What became of the certificate after you got it?

A. I assigned it.

Q. Who did you assign it to?

A. My impression is, it was to Mr. Dunham, but I could not say. There was a gentleman came with him. I could not say whether I assigned it to him or some one with him.

Q. Why was the certificate assigned? For what reason was it assigned?

A. I could not tell.

Q. Well, what was said about the land having been sold, if anything, at that time, by Dunham to somebody else?

A. I think this man wished to buy the land.

Q. This man that came to your place with Dunham?

A. Yes, sir.

Q. Now, can't you remember the man to whom you assigned this certificate?

A. I cannot.

Hosted by Google

Q. Can't remember whether it was Dunham or the other man?

A. I didn't pay attention enough to it to remember it.

Q. At whose request did you assign this certificate?

A. Dunham's. I staid at home. I think I met them at Mason. I think I was *there* at the time.

Q. How much money did you pay for this land?

A. Not any.

Q. Nothing at all?

A. No, sir.

Q. Did you receive anything?

A. No, sir.

Q. Is Dunham a relative of yours?

A. I believe he is, by marriage, a cousin to Mrs. Dwynell.

Q. All you done about that was at the request of Mr. Dunham and for Mr. Dunham's benefit, was it not?

A. I could not say for his benefit. It was at his request.

Q. Did you ever see this land?

A. No, sir.

Q. Know anything about it,—about its value?

A. Not very much.

Mr. Manager Huston—That is all.

By the Presiding Officer:

Q. Do you know who it was with Mr. Dunham?

A. I could not remember his name; he was a stranger to me.

Mr. McGowan—No questions.

The Presiding Officer—Call your next witness.

By Mr. Manager Grosvenor:

Q. Was this Van Dunham a clerk in the State Land Office at that time?

A. I think he was.

By Mr. Manager Huston:

Q. Could you not fix about the time when this was?

A. No, sir, I could not.

Hosted by Google

Q. Was it later than last fall?

A. Oh, no; it was in the spring, I think. It might have been the latter part of June.

By Mr. Shipman:

Q. Mr. Dwinell, do you mean a year ago now?

A. A year ago; yes, sir.

TESTIMONY OF PHILIP KERSHNER.

Philip Kershner, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Huston:

Question—Where do you reside?

Answer—In the city of Detroit.

Q. Have you had any business with the Land Office in this State?

A. I have had some business with it.

Q. There is only one point that we wish to call your attention to. I would ask you to relate what you know of a transaction regarding certain lands that it was claimed that Mr. Frost, of Detroit, had reserved.

A. I applied in January, 1871,—I think it was the early part of January,—for a hundred and twenty acres in town 35, 1 E. The answer to that communication was that the S. ½ of the N. E. ¼ was owned, or patented, to Geo. B. Frost, of Detroit, in 1869,—in November. The N. E. ¼ of N. E. ¼ I got at the time. I subsequently applied, after making some inquiries of Mr. Frost as to whether he owned it, and applied to the register's office in Cheboygan county. I found the land had not been sold, and I applied through David Preston, of Detroit—

Mr. Shipman—One moment. Won't you state what took place in the Land Office here. I suppose that is what you are after.

The Witness—I refer to what they did here, sir.

Mr. Manager Huston—He is going to state what further took place there, sir.

Hosted by Google

Mr. Shipman—We will object to what he discovered in the register's office, or what took place in Detroit.

The Presiding Officer—The witness will state what he knows.

The Witness—I subsequently applied for that land through David Preston, and got it.

Q. And got the land?

A. About the 13th day of February, 1871.

Q. What were the circumstances under which you got the land?

A. Well, after receiving word from the Land Office here that it was taken up by Frost, in November, 1869, I applied to Mr. Frost, and he could find no entry that he owned it. Nothing on his books at all—no certificate.

Mr. Shipman—Mr. President, we object to these outside conversations. Acts and facts we do not object to.

The Presiding Officer—I understand that it is merely a preliminary question, to get at what did occur.

Mr. Manager Huston—That is all.

Mr. Shipman—Very well; if it is preliminary, we do not object.

The Witness—In the meantime I wrote to Cheboygan, to see if it was on record there.

Mr. Shipman—Never mind what you found.

The Witness—That, then, led to my applying to David Preston for that same land, and I got it.

Q. You got the land?

A. Yes, sir.

Q. When was it you made your first application for the land?

A. In the early part of January, 1871.

Q. When did you get the land?

A. It was patented. I think the date of the patent is the 13th day of February, 1871.

Q. Do you know whether David Preston is a large dealer in the Land Office, or not?

Hosted by Google

A. I understand that he is a very large dealer; yes, sir.

Q. Do you know whether he has a private book, that is kept in the Land Office down here, for his especial benefit, by Mr. Edmonds or his clerks?

A. I don't know, sir.

Q. Was that conveyance direct to you from the State?

A. Yes, sir. I have the patent here with me. [Producing the patent.]

Mr. Manager Huston—We would like to offer the patent in evidence.

The patent is as follows:

[EXHIBIT R.]

No 22891.

In the Name of the People of the State of Michigan:

To all to whom these presents shall come, Greeting:

Whereas, Philip Kershner, of the county of Wayne, Mich., on the thirteenth day of February, in the year one thousand eight hundred and seventy one, purchased from the State of Michigan, the lands hereinafter described, pursuant to the laws of said State, then in force, and in such cases made and provided;

And whereas, The said Philip Kershner has paid for said lands, pursuant to the conditions of said sale, and the laws of the State duly enacted in relation thereto, the sum of one hundred dollars, and all legal interest thereon accrued, as fully appears by the certificate of the proper officer, now on file in the office of the Secretary of State of the State of Michigan, being certificate No. 9052 for swamp land;

Now, therefore, I, HENRY P. BALDWIN, Governor of said State, in consideration of the premises, and by virtue of the power and authority vested in me by the laws of said State, in such cases made and provided, do issue this patent, in the name and by the authority of the People of the State of Michigan, hereby granting and confirming unto the said Philip Kershner and to his heirs and assigns forever, the fol-

Hosted by Google

lowing piece or parcel of land, situate in the State aforesaid, to wit: The south half of the northeast quarter of section thirty-five (35), in township thirty-five north, of range one (1) east, containing eighty (80) acres, according to the returns of the Surveyor General: to have and to hold the above described and granted premises unto the said Philip Kershner, and to his heirs and assigns, to his and their sole and only proper use, benefit, and behoof, forever, as provided by the laws of said State, against the lawful claim or claims of all persons whatsoever.

In testimony whereof, I have caused these letters to be
[L. S.] made patent, and the great seal of the State to be hereunto affixed.

Given under my hand, at Lansing, this twenty-second day of February, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States of America the ninety-fifth.

By the Governor: HENRY P. BALDWIN.

SAM'L H. ROW,

Dep. Secretary of State.

Recorded Book 37, page 187.

CROSS-EXAMINATION OF PHILIP KERSHNER.

Cross-examined by Mr. McGowan:

Question—Will you describe the location of the one hundred and twenty acres again?

Answer—It embraces the S. ½ of the N. E. ¼ of section 35, town 35 N., 1 E., and the N. E. ¼ of the N. E. ¼ of the same section.

Q. One "forty" of which they wrote you Frost had?

A. No, sir. One "eighty," the one this patent describes.

Q. The one described in the patent that has just been offered in evidence?

A. Yes, sir.

Q. You made that application in the early part of January, 1871?

Hosted by Google

A. Yes, sir. I think it was as early as the middle, or earlier.

Q. Made your second application, in behalf of Preston, on the 13th of February following?

A. No, sir. The patent is issued on that day. The application was made as early as the 10th of that month.

Q. As early as the 10th of February?

A. Yes, sir.

Q. Do you know whether or not this Mr. Frost had been a contractor for the State?

A. I don't know, sir. The answer to my communication was, that it was patented to Frost in November, 1869,—I think the 19th of November.

Q. Patented to Frost?

A. Yes, sir.

Q. Have you that letter?

A. I have not.

Q. Where is it?

A. I think perhaps it is destroyed.

Q. Have you made any search for it?

A. I have.

Q. Who wrote that letter?

A. It was written by Theodore Day, of the U. S. Land Office in Detroit, at my request.

Q. No; who wrote the letter to you in which it was stated it was patented?

A. In answer to the communication of Mr. Day? I don't know what party in this office. It was shown to me. I don't remember who signed it.

Q. You don't remember who signed it?

A. No, sir, I might say that my eyesight, at that time, was so bad that I got Mr. Day to write it for me.

Q. Did you see that letter more than once, that stated that this land had been patented to Frost?

A. Yes, sir, I think I did, half a dozen times, at different times.

Hosted by Google

Q. Did you have it in your possession?

A. Yes, sir.

Q. Was the communication sent back to you from the Land Office here?

A. No, sir, it was sent to Mr. Day.

Q. Mr. Day handed it over to you?

A. He handed it to me;—yes, sir.

Q. You don't know who wrote that?

A. No, sir, I do not. It was in answer to our application to the office.

Q. Are you perfectly certain that the communication stated it was patented to Frost, or reserved to Frost?

A. I feel quite certain in saying it was patented to Frost.

Q. It may have been that it stated that it was reserved to Frost?

A. It is possible, sir; but my recollection is to the contrary.

Q. You say you never knew of Frost being a large contractor?

A. No, sir, I have not.

Q. Are you acquainted with Mr. Frost?

A. Partially, sir. I have met him several times.

Q. Did you personally go to the Land Office in any of these transactions?

A. No, sir, not the Land Office here.

Q. Have you ever made any examinations of the records of the Land Office here to see if any of these lands were marked up to Frost?

A. Not these particular lands, no, sir. When I got the patent I was satisfied.

RE-DIRECT EXAMINATION OF PHILIP KERSHNER.

Re-examined by Mr. Cochrane:

Question—How long after the application to Mr. Preston—how long after the date—before you received it?

Answer—I think in three days; not more than four, certain.

Hosted by Google

It was very soon; about as soon as the application could come up, and the patent be issued and returned.

Q. From whom did you receive the deed? That is, from whom was the manual delivery to you?

A. Mr. Preston.

RE-CROSS-EXAMINATION OF PHILIP KERSHNER.

Re-cross-examined by Mr. McGowan:

Question—What was the date of the letter written back to you from the Land Office here?

Answer—I don't know, sir. It was in a few days after our deed. I have forgotten just what date it was. It was in the early part of January, however.

Q. What was the date of the patent that was stated, in the letter, to have been issued to Frost?

A. In November, 1869. I think, the 19th. At all events it was in November, 1869.

Mr. Manager Grosvenor—We shall call our next witness a little out of the order which we intimated. We stated that we should investigate the affairs of the Land Office first, but here is a short witness which we propose to take up out of the order.

TESTIMONY OF H. J. CORBUS.

H. J. Corbus, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Grosvenor:

Question—Mr. Corbus, where do you reside?

Answer—Adrian, Michigan.

Q. What is your business or occupation?

A. Track-master of the railroad.

Q. What railroad?

A. The Lake Shore and Michigan Southern Railroad.

Q. How long have you been so engaged?

A. About twenty years.

Hosted by Google

Q. Are you acquainted with the respondent, Charles A. Edmonds?

A. Yes, sir.

Q. How long have you known him?

A. About twenty-five years.

Q. Did you have any conversation about the time of his election to the office of Commissioner.

A. Yes, sir.

Q. Upon which you congratulated him upon his promotion or obtaining the office.

A. Yes, sir.

Q. About what time was that?

A. Well, it was the winter of 1871, I think.

Q, What did he say to you at that time, in that conversation? Just state the conversation between you and him, in your own way.

A. Well, I congratulated him on his election, and then asked him what his salary was a year, and he made the remark that his salary was eight hundred dollars a year, but if there was any stealing in, he was going to have his share of it. That was the conversation.

Q. Was there anything further said in that conversation?

CROSS-EXAMINATION OF H. J. CORBUS.

Cross-examined by Mr. Shipman.

Question—Where was that, Mr. Corbus?

Answer—It was on the cars, between Coldwater and Adrian, I think.

Q. Do you recollect between what stations? Do you know whether it was before he had taken possession of his office or not?

A. Well, it was shortly afterwards, I think.

Q. How near was it to the first of January, 1871?

A. Well, I could not tell.

Q. A week or two, should you say?

A. It must be, I think, a week or two. I could not tell the month.

Hosted by Google

Q. Won't you state the manner, at the time this remark was made?

A. Well, in a laughing way, I thought.

Q. State whether you and he were joking about it?

A. I think we were.

Q. And laughing?

A. Yes, sir.

TESTIMONY OF ORSON BOUCK.

Orson Bouck, a witness, produced, sworn, and examined on the part and in behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Grosvenor:

Question—Where do you reside?

Answer—In Shiawassee county.

Q. How far from Vernon?

A. Five miles they call it, in the town of Vernon.

Q. How far from the railroad?

A. It is five miles,—five the nearest way you can get to it.

Q. How long have you lived there?

A. About seven years.

Q. What was your business before you went there?

A. Always farming, though I had been in the army, you know, but I came out of it, and located a piece of land there.

Q. How long were you in the army?

A. A year and a half.

Q. You say you located a piece of land there?

A. I licensed a piece of land of the State.

Q. Swamp land?

A. Swamp land.

Q. How long ago was it you licensed that land?

A. It is almost seven years.

Q. How long have you resided on that land?

A. Pretty nearly seven years. I have been on it continuously, too.

Q. Where do you reside now?

A. On the land.

Hosted by Google

Q. What improvements have you made on the land?

A. I have got me a house, a barn, an orchard, and shrubbery,—wheat growing,—some considerable improvements,—fencing, ditching, and so on.

Q. Are you acquainted with Edmonds, the Commissioner?

A. I have seen him once or twice.

Q. Are you acquainted with Mr. Cornell, of Coldwater?

A. Yes, sir.

Q. When did you see Cornell first?

A. I don't recollect the date exactly. I don't know. I have letters that will show. You have a letter that he wrote about the oxen, and gave it to you. That was the first I was acquainted with the gentleman, or that I ever saw him. Mr. Long, do you recollect the time?

The Presiding Officer—Witness, you are testifying.

Witness—I wanted to know the day of the month. That was what I wanted to know.

Q. About what time can you state?

A. I cannot tell whether it was along in March or April. Foddering was not over with yet, however. He came where I was with my cattle. Foddering was not over with for some time.

Q. Wait a minute. I will try and get a letter. Is that the letter that you referred to,—that you can refresh your memory by? [Showing witness a letter,]

A. No, sir, not exactly this one. No, sir, that is not the letter. It is the other one.

Q. [Presenting another letter to witness.] Is that the one?

A. That is the one.

Q. Look at that, and tell us what time it was?

Mr. Shipman—Time that he saw Cornell?

Witness—Yes, sir, Cornell. This is dated the 13th of February.

Q. Last February?

A. Yes, sir.

Hosted by Google

Q. Well, now, that isthe date of the letter,—can you state about what time that was you saw Cornell?

A. I was to meet Cornell at Owosso, and I think it was—

Q. About how many days,—a few days? It does not make much difference.

A. I think it was the second or third after I was to meet him there. He came where I was, to look at the property.

Q. Did you have an appointment with Cornell to meet him at Owosso?

A. No further than this: He was up in our neighborhood and had written to a man before this, that he wanted to sell the land.

Q. Sell what land?

A. This land of mine.

Q. That is the land you had a license for?

A. Yes, sir.

Q. Why was he going to sell it?

A. He bought it, he said.

Q. Bought it of whom?

A. Bought it of the State at the Land Office.

Q. This same land you had been living on for the last seven years?

A. Yes, sir, the same land. He said he had bought it.

Q. Go on.

A. He came to my house with the scrip, to see the minutes of the land. Mr. Michael Woolston came with him, and he rode up to the fence where I was at work, and he wanted to know the number and the denomination of my land.

Mr. Shipman—Mr. President: We object to the question. We do not know the object of it, but it looks as if it were immaterial; it seems to be a transaction between third parties, and a conversation between third parties; it may be admissible.

Mr. Manager Huston—What is the ground of your objection?

Hosted by Google

Mr. Shipman—Because the transaction is between third parties, and immaterial.

Mr. Manager Huston—Mr. President: We propose to show just this state of facts in regard to this particular piece of land: that Mr. G. Cornell came there and got the minutes,—the description of the lands,—and he came back and claimed to have purchased the land at the Land Office; got a certificate from the Commissioner; that this gentleman came up after he had learned that fact at the Land Office; that he had an affidavit of eight of his neighbors, that he had settled on this land and had been on it seven years, and that the Commissioner declined to do anything about it until after this man had given to Mr. Cornell his oxen.

When Mr. Cornell gave up the certificates, the sale to Mr. Cornell was canceled, and a new license issued immediately to this man; and they then asked him to make up his proof under the new license, that he had been there five years, and the patent issued to him. That is the state of facts that we expect to prove. We expect to show that the Commissioner was applied to and had knowledge of all the facts, and also that it was in direct violation of the statute of the State; and we claim that it is competent to show the whole transaction. We expect to show in connection with this whole matter that Mr. Cornell only had a half interest in the land.

Mr. Shipman—We will withdraw our objection to that.

Q. You were stating about Mr. Cornell?

A. He rode up to the fence with Mr. Michael Woolston, and said he had the minutes to that piece of land, and he would like to see how his and mine agreed,—if they agreed with mine he would like to see mine. Said I, "Yes, please walk right into the house, and I will show it to you." He gets out of the buggy, and Mr. Woolston holds the horses, and I took the license that I had and presented it to him, and he took it up and looked it over. I don't know whether he read it or not, but he was looking at it some time, several minutes, and says I, "There is a license for this piece of land of mine; I

Hosted by Google

suppose my deed is ready any time I go after it," and he turns right around and took and figured on a little piece of paper some figures and put them in his pocket, and turned right around and got into his buggy, and started off, and told Mr. Woolston, says he, "This land is good for two hundred dollars." Well, Mr. Woolston says, "You are wrong." Says he, "You ain't no right to this land."

Mr. Shipman—Did you hear this conversation between him and Mr. Woolston ?

A. Well, Mr. Woolston told me this down to his house.

Mr. Manager Huston—Never mind about what Mr. Woolston told you; go on and tell what next occurred.

A. Well, then the gentlemen went home. That appears by this letter I have here.

Q. What letter is it ?

A. That he wanted Woolston to write him to find a buyer.

Q. You are acquainted with Mr. Cornell's handwriting ?

A. Not any very great; I had a few letters.

Q. When you saw Mr. Cornell, did he say that was his letter; that he wrote that letter ?

A. Well, he never told me it was his letter.

Q. Go on then, with your narative.

A. Well, then, after he left—

Q. Yes, go on, and relate what facts occurred in regard to the land, and be as brief as possible; from that time until it was finished ?

A. After he left my house, he went back, as I supposed, and then he wrote a letter to Mr. Changer, that the land was for sale.

Q. Mr. Changer was one of your neighbors ?

A. Yes, C. C. Changer, Esq.,—that land was for sale, that he had a standing offer of two hundred dollars but he wanted more than that. I told Mr. Changer if he wanted to sell the land,—he had got a title to the land, and the land was his, before I would leave it, or lose it, as I expected I had got to, and Mr. Changer said

Hosted by Google

he guessed I would have to lose it. I told him I would like to buy it, as my all was there. I had got things started there comfortably, and I would try to buy it. Says he, "I think you can buy it." Says I, "I will turn out my team." Says I, "We'll make him a proposition; I will turn out my team to him," and wrote him a letter, if he wanted to sell it, and he could come down and look at the team where they were at the neighbors'; and the team suited him, and he said he would take the team.

Mr. Shipman—Who said that?

A. Mr. Cornell. Says I, "I will give you the team if you will give me a warranty deed of the land, if the land is yours." Says he, "I will take the team and send you a patent for the land." He said it would be there at the office at Vernon between that time and Monday, he thought, without mistake. Well, he went back, as I suppose went home; a short time after that he sent me orders, after I had secured him with these cattle; you know I had put these cattle in a second man's hold.

Q. Where did you deliver the cattle?

A. To Mr. John Long; that was a request of him. And I told him that I would leave them there with Mr. Long.

Q. He required that of you, did'nt he?

A. He wanted I should leave them in some good man's hands. He wanted to know if I would just as leave leave that in C. C. Changer's hands, and I told him I had n't. I told him I would leave them with Mr. Long. It was agreed to, that it was fair and would be all right. Says he, "I will go and see Mr. Long." I told him where he would find Mr. Long, at Vernon, in a shop. Says he, "I will go and see him." And, says he, if he will keep the cattle, he would send me a patent at such a time for the lands. Well, then, I think, he went back, and the next news I got of him I got a lease,—a new lease.

Q. What do you mean by lease,—a license?

A. Yes, sir. A license, a new license.

Hosted by Google

Q. Where from,—the Land Office?

A. Yes, sir, the Land Office here,—a new license, and before this he said that he wanted I should prove my claim up in order that he might get my money from the State. Says I, "Mr. Cornell, James Cummings and I came here to prove up my claims to the Land Office. I fetched seven or eight witnesses whose oath was taken before a justice of the peace. I brought them in here and Mr. Cummings came with me."

Q. Who was Mr. Cummings?

A. The county treasurer of Corunna.

Q. The county treasurer of Shiawassee county?

A. Yes, sir; he came with me, and we presented the papers before the Land Commissioner, and asked him, I think, what he could do about it, or what he would do, or what could be done. I think the Commissioner had got one or two such cases, or had had one or two just such cases, and he said as the gentleman, I think, was living in Coldwater, I think he said he was going back, or was going home Saturday himself.

Q. By the gentleman, you mean Mr. Cornell, lived in Coldwater?

A. Yes, sir, in Coldwater, and the Commissioner said he was going there Saturday. I think it was Saturday, He said he was going home, or going there, and he thought he would see him as soon as Saturday,—Friday or Saturday, somewhere along there; and he said, "I will consult with him and see what I can do."

Mr. Cummings told him to find out about what he would do, and then write to him. I think the Commissioner told him he would, and the Commissioner requested us to leave the papers with him, and he would see that they were secure, and we left them. Mr. Cummings and I left them.

Q. Left the seven or eight affidavits that you refer to?

A. Yes, sir; and the lease, and the license too.

Q. Do you know whether the Commissioner wrote to Mr. Cummings or not?

A. I heard Mr. Cummings say that he did not.

Hosted by Google

Q. That he did not write to Cummings?

A. Did not write to him then.

Q. What next occurred?

A. We went off, and went home, and away.

Q. What next?

A. We left him; did n't stay there any longer.

Q. You said this was at the time Mr. Cornell was down at your place,—when he asked you to prove your claim?

A. Yes, sir.

Q. Now, you have told us what you said to him; tell us what occurred next.

A. Well, Mr. Cornell wanted I should—when he sent the new lease he wrote a letter in the lease, stating that if I would prove up my claims he would send me a patent,—the Commissioner would. Mr. Cornell said that he could draw his money back from the State. I had to prove up my claims in order to give him a chance to draw it back.

Q. Have you got that letter from the Commissioner?

A. No; the letter is gone. I have got witnesses, I suppose, that can be produced.

Q. What did you do after you got the new lease in the letter from the Commissioner?

A. I proved up my lease right straight off; went to Vernon in about an hour's time after I got it, and sent it forward right here to the office,—right along; then my deed came.

Q. Your deed came to you, then?

A. It came in care of Mr. Long; it did not come directly to me, it came in care of him,—these letters were all directed Mr. Long. I was some ways from the office.

Q. Well, sir, what became of the cattle then?

A. When I accepted the deed, I refused to take the deed when it came, on account that I could not see wherein I should have to prove up my claims, or any claims, if Mr. Cornell had bought it and got the deed for it, and paid his money for it, as he said he had, why I should have to prove up any claims at all, and I wanted an understanding about it. He said the

Hosted by Google

thing was all clear, and was all straight and right, and there was no misunderstanding, nothing wrong about the thing at all, and he would not be afraid to obligate himself under twelve or fourteen hundred dollar bonds,—or a thousand dollars,—that the thing was all right and straight, and no wrong nor nothing about it; and I gave up the cattle and took the papers, and thought it was all right.

Q. By the papers you mean the deed?

A. Yes, sir: took the deed.

Q. You gave up the cattle to Mr. Cornell?

A. Yes, sir, Mr. Long gave them up to him; they were in his possession untill I accepted the deed.

Q. What did Mr. Cornell do with the cattle?

A. Sold them to Mr. Long.

Q. What were the cattle worth?

A. One hundred and fifty dollars, cash down.

Q. Did you have any other team?

A. No, sir, and no way to buy one.

Q. Will you let me look at those letters?

[Witness produces letters.]

Mr. Manager Huston—Mr. President, we would like to have these letters marked by the Secretary, and held until we have other witnesses to prove them by.

The Presiding Officer—The Secretary will mark them, for the purpose of identification.

Mr. Manager Huston—Those are the letters that you received, during this transaction, from the gentlemen that wrote you?

A. Yes, sir, these are all concerning this land transaction.

Q. State whether you had any conversation with any of Mr. Edmonds' clerks at the time that you and Cummings were at the office. If you did, state the conversation.

A. I did n't have any. No, sir, not any at all.

Q. Where is your original license,—the first license that you received?

Hosted by Google

A. Mr. Cummings and myself came here to the office with them, and with those proof papers,—the witness papers,—and left them with the Land Commissioner, and Mr. Cummings said to him, "You will take care of them," and he said he would, and that is the last I ever heard of it. I heard afterwards they were lost, so that he sent me a new one—a new license—to prove up over. Those were lost,—the first ones.

Q. What became of the new license?

A. I sent it back, after I had proved up my claims.

Q. What was the date of the new license,—do you remember?

A. Well, sir, I can't tell you.

Q. Dated back?

A. Yes, sir, way back to my first one.

Q. The new license was dated back to the same time?

A. Yes, sir; about seven years ago,—between six and seven.

Q. Now are you sure that it was a new license that they sent to you, or the same old license sent back?

A. Well, I could not say, as for that, but they said they had lost them papers. It might have been the old one,—I could not say.

Q. They said they had lost the old ones?

A. Yes, sir; the papers were lost.

Q. Lost those affidavits?

A. Yes, sir; that is the way I got it from Mr. Cornell. He said those papers were lost and I would have to prove up again. I could not say,—it might have been the same license.

Q. How was it about your land being off from any main road?

A. It laid three-quarters of a mile from the main road, and I had to get a road laid through to it, and after the neighbors found out that Mr. Cornell—

Q. What did it cost you to get that local road—

A. Over a hundred dollars.

Q. Did you have any conversation with Mr. Van Dunham regarding this transaction?

Hosted by Google

A. Not that I know of. I don't know the gentleman.

Q. The gentleman that wrote you the letters?

A. I don't know the gentleman at all, sir.

CROSS-EXAMINATION OF ORSON BOUCK.

Cross-examined by Mr. McGowan:

Question—Mr. Bouck, did you answer any of the letters that were written to you?

Answer—I don't know as I did.

Q. Did you write any letters in this transaction at all?

A. I wrote one.

Q. You wrote one?

A. I did.

Q. Did you write it yourself?

A. I did.

Q. Where did you keep the old license?

A. Kept it in my chest,—in my own house,—under lock and key. Yes, sir.

Q. You say you got that about seven years ago?

A. Yes, sir; between six and seven.

Q. Had you ever made any proofs on that?

A. What, settling up?

Q. Yes, settling up.

A. I went to the Commissioner.

Q. I mean previous to this time; when you went with Mr. Cummings?

A. I had before,—before I came out here.

Q. You had before that?

A. That is the way I came to find out the land was sold a few days before that.

Q. When was it you went to the Land Office to prove up your claims?

A. Last fall.

Q. How long had you been on the land?

A. Six years, and over.

Hosted by Google

Q. Did you ever read over your license?

A. I did.

Q. Did you notice a clause that required you to make those proofs in three months?

A. I did, sir.

Q. Did you make them within three months after the time you went on to the land?

A. I did, sir,—and brought the supervisor's statement with me.

Q. I understood you to say you had been on the land six years when you made the proofs?

A. I had been on the land six years before I made the final proof.

Q. You brought your first proof in last fall?

A. Yes, sir.

Q. You went to the supervisor about six years ago, after you had been on the land three months, and gave proofs.

A. I had been on the land about three months, and I went to the supervisor and proved up my claim of settlership.

Q. What did you do before the supervisor?

A. I went and told him I was a resident of a place, and wanted to prove up my claim before him.

Q. What did you do?

A. I made oath to him.

Q. In writing?

A. Yes, sir.

Q. Did he swear you to it?

A. Yes, sir.

Q. What became of that paper?

A. I could not tell you. He did not give it to me. He said he would make it out and send it in, or give it to me, and I do not know whether he ever sent it in, and he does not remember himself. I have testimony to that. He does not remember whether he ever sent it in or not. He cannot tell; but he said he would.

Hosted by Google

Q. You never saw that paper afterwards?

A. Not the statement he was to make out and send to me.

Q. Did you sign any paper before the supervisor?

A. Yes, sir; but I did not see it afterwards.

Q. He swore you to it?

A. Yes, sir.

Q. You left that paper with the supervisor?

A. I left for him to make out one and send in to the Land Office.

Q. The paper you signed and swore to, you left with the supervisor?

A. He did not give me one; I did not know I was to have one.

Q. You left it there?

A. I left my statement there.

Q. Have you ever seen it since?

A. I have not; but he said he would send it in; he would send in a statement to show I was a settler of the place.

Q. Do you know of your own personal knowledge, whether he did or not?

A. No, sir.

Q. From that time until you and Cummings came out here, did you do anything in the way of establishing your right to your land?

A. I went to the Commissioner to prove up my settler's license.

Q. In Lansing?

A. In Corrunna. There is one there, at least he says he is. He did business of that kind.

Q. When was that?

A. Last fall.

Q. Did you do anything towards proving your claim, from the time you went to the supervisor until you went to that commissioner last fall? Did you make any proof or sign any paper?

A. Not with the supervisor.

Hosted by Google

Q. With anybody?

A. No further than to get witnesses to come here.

Q. I mean up to last fall, at the time you went to that commissioner at Corunna?

A. I do not recollect now.

Q. When was it that Cornell drove up to your house, with that man in the buggy?

A. I could not tell what day of the month it was.

Q. What month was it?

A. I am not positive on that point, I paid so little regard to the thing. I am not positive.

Q. He came in and told you he had a license?

A. He came in and said he had the minutes of my land.

Q. And wanted to see your minutes?

A. He wanted to see my minutes. He wanted to see how they agreed with his, and I invited him to walk into the house and I would show him mine, and I took this license.

Q. You took this license and showed it to him?

A. Yes, sir.

Q. You understood he had something like that license?

A. He had the minutes on a piece of paper about the size of your hand,—the description of the land.

Q. Was that before or after you and Cummings were out here at the Land Office?

A. It was before I came here.

Q. How long was it before you and Cummings came here?

A. He came to my house with these minutes of my land before I knew it was sold.

Q. Can you answer my question,—How long was it before you and Cummings came out here, that Cornell was at your house?

A. I could not tell you exactly how long it was.

Q. What is your best recollection?

A. It might have been three or four weeks after he was there that we came out here, and it might have been a little over. I could not tell.

Hosted by Google

Q. How often was Cornell at your place?

A. I do not recollect of his being there more than twice.

Q. Was it after his first visit at your house that he told this neighbor of yours that the place was worth two hundred dollars? That man's name was Changer?

A. It was Woolston. He said that place was good for $200.

Q. Did he say your minutes agreed with his?

A. He did, sir. He said that was the lot.

Q. Did he tell you then that he had purchased it?

A. He did not.

Q. Did you understand from anything he said that he had purchased it?

A. No, sir; not a word.

Q. What did you understand that he was there for?

A. Mr. Woolston gave me this knowledge.

Q. From anything that transpired there between you and Cornell, what did you understand Cornell was there for?

A. We did n't have any words. He wanted to see the minutes of my land to see if they agreed with his. I showed them to him, and they agreed. He said he had the minutes, turned right around and jumped into the wagon. He said he had to hurry and get back in time to meet the train.

Q. You say Cornell told you the minutes were lost?

A. I think it was he,--I am not positive,—yes, think it was he.

Q. Would you not have known your old license if you had got it back again?

A. I don't know that I had any particular mark on it.

Q. You had kept it six or seven years in your chest?

A. Yes, sir. I do not know that I had any particular mark on it. It was not soiled a mite that I know of.

Q. The one that came back to you was dated the same day as the old one?

A. I think it was.

Q. Was it exactly like it?

A. It looked like it and read like it.

Hosted by Google

Q. You read over your last one?

A. Yes, sir, and the officer read it over.

Q. You had frequently read the other one?

A. Yes, sir.

Q. Where is the license,—the one that was sent back to you?

A. When I proved up my claims I supposed I had to send it back to the office.

Q. You got your patent on delivering up the license.

A. Yes, sir.

Q. Can you fix about the time you and Cummings went to the Commissioner's office?

A. I cannot, now.

Q. About when was it?

A. It was some time in the fall. I cannot remember now.

Q. Who else was in the Commissioner's office when you and Cummings were thers?

A. I cannot tell you. There appeared to be quite a number of clerks there.

Q. Were there any others, of your acquaintances, with you and Cummings?

A. No, sir.

Q. The talk you have narrated, was between you and Cummings, and the Commissioner here?

A. I believe that is the gentleman.

Q. Will you state what was said? Give the whole talk in the order in which it occurred?

A. I will tell you the entire particulars. I told him that I wished to prove up my claim on that lot, and I had brought in my license to show that I was a settler, and I told him what I had done on the lot, and what I had got done on the lot, what had been cleared, what buildings had been erected, etc., in fact, everything that was necessary to prove up my claim I think the gentleman said that they had one or two such cases on hand.

Q. Did he say the land had been sold?

A. I do not recollect that he said so, and I do not know but

Hosted by Google

that he did so. Cummings told me I think that it was sold. I think we told him that we had come in to prove up my claims on the land. I told him I wanted to prove up my claims on this piece of land, and he said "We have one or two just such cases," and Cummings asked him what he would do about it, and I think the Commissioner said he could not tell him,—could not give him any correct answer, or something like that, until he saw Cornell.

Q. Did not the Commissioner tell you there had been no three months' proof filed in the office?

A. I do not recollect.

Q. Did he not tell you that you had not complied with your license, or words to that effect?

A. No, I could not tell you.

Q. Nothing of that kind was said to you?

A. I could not tell you.

Q. Did he not tell you, or Cummings, that you had not filed the three months' proof, and that the land was subject to sale under the law, and that he did not know that you occupied it?

A. If he said so, he said it to Cummings. I do not recollect hearing it. I will not say that he did not. I do not recollect hearing it.

Q. Did he not tell you and Cummings, or Cummings in your presence, that the land had been sold to Cornell, and that Cornell would have to surrender his certificate to the land before he could patent it to you?

A. Cummings told me so. I do not recollect hearing the gentleman telling me that. If I did I have forgotten it.

Q. Cummings told you the gentleman told him that?

A. Yes, sir; and he would see him, and see what he could do about it. He was going down to Coldwater Saturday. He said he was a neighbor of his, and he would see him, and see what he could do about it, and write to Cummings. Cummings was doing the business.

Q. Do you know why he did not write Cummings?

A. No, sir.

Hosted by Google

Q. Did not Cornell write to you?

A. No, sir.

Q. Was there a word said between you and Cummings and the Commissioner about your cattle?

A. I guess not.

Q. Do you think not?

A. I do not think there was. I do not know that he knew that I had a yoke of cattle or anything.

Q. When was it that Cummings told you that he had not received any letter from the Commissioner?

A. It was along in the winter.

Q. That the Commissioner had never written to him?

A. That he had not written to him as he agreed to, and he could not tell the reason why.

Q. That he had heard nothing from him?

A. Had heard nothing from him.

The Presiding Officer—The Senator from the Third sends the following question, which the Secretary will please read.

The Secretary read the question, as follows:

Question—"Did Mr. Cornell at any time, while at your place, show you any license or certificate of purchase of land from the Land Office?"

A. He took out a paper. He did not give it to me, but held it in his hand, and said here I have a paper calling for a deed, when I sell the land; and when I sell the land I leave it in such a way that they can make the deed out at Lansing, and save making it over twice,—save the expense. I did not take the deed. I took a kind of a paper calling for a deed when I sell the land.

Q. Did he call it a certificate?

A. To save expense he let them make the deed out to him.

Q. Did you see any seal on that paper that he held in his hand?

A I did not.

Q. Do you know whether he called it a certificate or not?

A. I think he said "certificate," but I would not be positive;

Hosted by Google

but he said this: I have got something for a deed, calling for a deed when I sell the land.

Q. Now, don't you know Mr. Cornell gave up what claim he had in order that the land might be patented to you?

A. I don't know anything about it.

Q. Did not the Commissioner tell you, in the presence of Mr. Cummings, that Mr. Cornell would have to surrender his papers before he could patent the land to you?

A. No, sir; he said he would go and talk with him to see what he could do.

Q. Mr. Cummings told you that?

A. Mr. Cummings,—that he would see the Commissioner and talk with him, and then write to Mr. Cummings and let him know what he would do.

Q. What did the Commissioner say about talking with Cornell and making any promises that he would try to get a compromise?

A. I don't know; he said he would see Mr. Cornell and see what he could do.

Q. Were you present during all this conversation between Cummings and the Commissioner?

A. I don't know. Mr. Cummings saw the Commissioner before I did; he came down in the room where I was; he said, The Commissioner was up above, now; we will go up and see him. I don't know whether Mr. Cummings and him had any talk before or not.

Q. That was up to the old office on the hill?

A. Yes, sir.

Q. How large was that paper which Mr. Cornell had in his hand that he had got from the Land Office?

A. A small paper.

Q. Did you see it unfolded.

A. I did not notice it particularly; he held it up partly unwrapt; he said: "Here is a deed I have got. When I sell this I will leave it to the Commissioner to fix."

Hosted by Google

Q. Was there any part of it printed?

A. I cannot say.

Q. You did not notice it at all?

A. I cannot tell. He said that was—

Q. Was it as large as the sheet in my hand, when undoubled?

A. I don't think it was undoubled.

Q. Was it as long this way, if folded up?

A. Yes, sir.

Q. It was only partly unfolded?

A. I think not all unfolded.

Q. You don't know whether printed or written?

A. I noticed there was writing on it.

Q. Did you notice whether there was any writing on it?

A. I did not notice, for I was busy at work. He came where I was at work.

RE-EXAMINATION OF ORSON BOUCK.

Re-examined by Mr. Manager Grosvenor:

Question—Which time was it Cornell showed you that paper?

Answer—When he came down to see about the oxen.

Q. Who did you get to assist you in negotiating this matter?

A. Mr. Cummings.

Q. Who after that?

A. Mr. John Young.

Q. Did you get Mr. Young to write any letters for you?

A. Yes, sir, the business was wholly transacted through his hands.

Q. He was your agent for that?

A. Whatever he did, I supposed was all right.

Q. Who acted for Cornell?

A. I cannot tell.

Q. A clerk by the name of Van Dunham?

A. Yes, sir.

Q. A clerk in the Land Office?

A. Yes, I suppose so.

Hosted by Google

Q. You understood him to be?

A. Yes, sir, he was one of them there. The letters were directed by mail there. Mr. Cornell ordered him to mail his letters there to Van Dunham in the office.

RE-CROSS-EXAMINATION OF ORSON BOUCK.

Examined by Mr. McGowan:

Question—When did you learn that Van Dunham was Mr. Cornell's agent?

Answer—I did not learn any further than that he ordered his letters all mailed to Van Dunham.

Q. The second time he was there?

A. Yes, sir; when he was doing business; when Mr. Young was doing my business; wanting Young to direct to him.

Q. Were they directed to Van Dunham, or to Young and sent to Van Dunham's care?

A. To Van Dunham, I think.

Q. Did you hear directions given by Cornell?

A. I did not.

Q. Who did he give directions to?

A. To Mr. Van Dunham, at the Land Office, Lansing, Mich.

Q. At Young's house?

A. Yes; he told him to write his letters to Mr. Van Dunham.

Q. That was when he was fixing this matter up about the oxen?

A. Yes, sir.

Q. Had he given any such directions the other time he was at your house?

A. Not to me; but he did to other ones to write Mr. Woolston.

Q. You don't know anything about it?

A. Only their words. I did not hold any correspondence with him; only just one letter, I think. I think one letter was all I wrote to him;—I think it was.

Mr. McGowan—That is all.

Hosted by Google

TESTIMONY OF JOHN LONG.

John Long, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Grosvenor:

Q. Where do you reside?

A. Vernon.

Q. What county?

A. Shiawassee.

Q. How long have you resided there?

A. Eighteen years.

Q. What is your business?

A. I am a farmer and cabinet maker. I carry on both branches.

Q. Are you acquainted with Mr. Bouck, who just left the stand?

A. Yes, sir, I am.

Q. How near do you live to him?

A. About four miles.

Q. How long have you known him?

A. Ten or twelve years.

Q. Did you know him before he was in the service?

A. Yes, sir.

Q. How long has he resided where he now resides?

A. I think it is six or seven years. I cannot tell exactly.

Q. Does he own any other land there that you know of?

A. No, sir.

Q. He is a poor man?

A. Yes, sir.

Q. Has he a family?

A. Yes, sir.

Q. How large a family?

A. He has a large family. I don't know how large it is.

Q. Did you see him after he came home after he had left the service?

A. I did, soon after.

Hosted by Google

Q. Do you know anything about his state of health at that time?

A. It was not very good.

Q. He is not a very competent business man?

A. No, sir.

Q. An illiterate man?

A. Yes, sir.

Q. Did he ever call upon you to do any business for him, in connection with this land?

A. Yes, he chose me to do business between him and Cornell. They both picked on me, I believe.

Q. Did you act for him?

A. I did.

Q. Did you do any business for him, when he and Cornell were present?

A. I did not,—yes I did, after the business was all over, about this same dissatisfaction; and they came together and fixed up the matter.

Q. What did Cornell get out of him for the land?

A. A yoke of cattle.

Q. Had he any other team?

A. No, sir.

Q. How much improvement has he upon that land?

A. Six or seven acres, I believe, somewhere along there.

Q. Any house?

A. Yes; a log house.

Q. Has he done any ditching upon it?

A. I have not seen any ditching; I understood he had.

Q. Are you well enough acquainted with him to be able to state whether he has lived there continuously since he went on to the land?

A. Yes, sir; he has worked for me more or less of the time?

Q. Had a family there on the land all the time?

A. Yes, sir.

Q. In the course of your business for him did you have occasion to write to either Mr. Cornell or Mr. Van Dunham?

Hosted by Google

A. I wrote to Van Dunham.

Q. Why did you write to Van Dunham?

A. That was Cornell's request, that I should.

Q. Did you receive any letter from Van Dunham in pursuance of that business?

A. Yes, sir.

Q. In answer to any letter you wrote him?

A. Yes, sir.

Q. Did you retain a copy of the letter you sent to Van Dunham?

A. I did not.

Q. Can you remember the substance of it?

A. Yes, sir.

Q. Can you state it?

A. I wrote to him that he had sent out to Mr. Bouck to make his claim on the land, and the neighbors there had told Mr. Bouck that if Mr. Van Dunham owned the land he did not know why he would make any claim; he would not give up the cattle. I wrote to him there might be trouble about it probably, for Mr. Bouck would replevy the cattle, and I want to know what to do, and he had better telegraph to Cornell to know what to do, as there would be a lawsuit; the deed had not come. I did not know what to do, and he wrote me back an answer.

Q. Look at that letter and see whether that was a reply to that letter.

[Showing witness a letter.]

A. Yes, sir.

Q. That is the reply?

A. Yes, sir.

Q. Now, Mr. Cornell came there. This letter is dated March 6. Did you see Mr. Cornell there after that time?

A. Yes, sir; he telegraphed right to him, and he came right down.

Q. After you received this letter?

A. Yes, sir.

Hosted by Google

Q. Mr. Cornell came out?

A. Yes, sir.

Q. What was done then between them?

A. I told him that Mr. Bouck was dissatisfied with the papers, and that the supervisors and others had told him not to give up his cattle. The claim was in him, aud he ought not to give up his cattle, and I was sorry I had had anything to do with it. He came out there to explain himself, why he had sent out those papers. He said that he had paid for the land, but in order to get his money back from the State again, Mr. Bouck had to press his claim; otherwise he couldn't get it back.

Q, Will you state whether in that conversation Mr. Cornell claimed to have a patent for the land?

A. He did not, I believe. I think he did not claim to have any. He said that he had paid for it, but never had taken any patent, as I understood him; he had never taken any.

Q. Do you know C. C. Changer?

A. Yes, sir.

Q. Is he a neighbor?

A. He is a neighbor of Mr. Bouck. He adjoins him.

Q. Do you know whether he had anything to do with the negotiations between Cornell and Bouck?

A. Mr. Changer told me he would like to buy the land, but he did not want to get it from Bouck. If Bouck had any right there, he did not want to buy the land.

Q. The cattle were finally given up to Mr. Cornell, were they?

A. Yes, sir; and I bought them.

Q. You bought them from Mr. Cornell?

A. Yes, sir.

Q. The result of the whole bargain was what?

A. He was to give him the cattle for the land.

Q. The result of it was, Bouck lost his cattle and was placed back where he was before?

A. Yes, sir.

Hosted by Google

CROSS-EXAMINATION OF JOHN LONG.

Cross-examined by Mr. McGowan:

Question. Mr. Cornell told you that he had paid for the land?

Answer. Yes, sir.

Q. That he had taken out some kind of a paper?

A. Yes, sir; but he had taken out a deed.

Q. Did he say he had a certificate?

A. I think he did.

Q. Did he say he would have to deliver that up before Mr Bouck could get his land?

A. Yes, sir.

Q. That on the delivery of that, and Mr. Bouck's proof being made, that Mr. Bouck could get a patent?

A. Yes sir, and would get his money back.

Q. He could get his money back, and the land he deeded to Bouck?

A. Yes, sir.

Mr. Manager Grosvenor—We offer these papers in evidence; they are a little out of order, but we will offer them, and we expect to introduce other witnesses in due time. Mr. Changer, Woolston, and Mr. Cornell, in relation to these same matters. We will offer them to you, and you may look them over and say whether you will admit them without any ceremony.

Mr. McGowan—It is so close to the hour of adjournment, that I suppose we may look at them, and report in the morning.

This was agreed to.

TESTIMONY OF ADAM WOOLOVER.

Adam Woolover, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Huston:

Q. Where do you live?

A. Tuscola county.

Hosted by Google

Q. What part of Tuscola county?

A. Koylton.

Q. How far from any railroad?

A. About twenty miles, I think they call it, if I am not mistaken.

Q. It is on the Port Huron road?

A. Yes, sir, a little east of Lapeer.

O. How long have you lived in the township of Koylton.

A. I have lived there going on six years.

O. Six years?

A. Going on six years.

O. Do you remember the description of land that you live upon?

A. Section 85, I think, if I am not mistaken,—if my memory puts me right.

Q. Do you remember whether the south half of the northeast quarter of section 35?

A. Yes, sir, I think it is, if I am not mistaken.

Q. When did you go upon that piece of land?

A. I went on to it five years ago in August. I took possession of it then.

Q. Five years ago last August?

A. Yes, sir.

Q. And have been residing on it since that time?

A. Yes, sir.

Q. From whom did you get the land?

A. I took it up from a man in Vassar. I cannot tell his name.

Q. Was it State swamp land?

A. Yes, sir.

Q. You had a license for it?

A. Yes, sir,

The Presiding Officer—It is now four o'clock. The hour of adjournment having arrived, the Senate, sitting as a Court of Impeachment, stands adjourned until to-morrow morning at nine o'clock.

Hosted by Google

Lansing, Wednesday, May 8, 1872.

The Senate met, and was called to order by the President *pro tem.*

The Sergeant-at-Arms made the usual proclamation.

Roll called: quorum present.

The Presiding Officer—The Honorable Managers on the part of the House will proceed with the evidence in support of their articles of impeachment. Senators will please give their attention.

Senator Wilcox—Mr. President: I ask leave of absence for to-morrow. The Prison Inspectors meet to-day to open the bids for the remodeling of the Prison, and Mr. Collyer's resignation has been accepted, so that it leaves but one member upon the board, if I am absent, who is acquainted with the works, and I ask leave of absence this morning in order that if leave should be granted, I may telegraph him. It is getting so late n the season that it is very essential that we should accept the propositions and set them at work.

Leave of absence was granted.

The Presiding Officer—The Honorable Managers will proceed with their evidence.

ADAM WOOLOVER, RECALLED.

Examined by Mr. Manager Huston:

Question—You stated the last thing last night, or in your testimony yesterday, that you had a license for the piece that you were living upon?

Answer. Yes, sir.

Q. [Showing witness a paper.] Look upon that paper and see if you recognize it as the paper you call a lease?

A. My eyes are so bad, I can't see hardly, since the fire. Yes, sir, that is the same paper.

Mr. Manager Huston—We would like, Mr. President, to file the license, as evidence in the case.

The Presiding Officer—Is it offered in evidence?

Mr. Manager Huston—Offered in evidence.

The paper is as follows:

Hosted by Google

[EXHIBIT S.]

SETTLER'S LICENSE, UNDER ACT 108, APPROVED MARCH 7, 1861.

To all to whom these presents shall come:

Whereas, Adam Woolover, of Malahide, in the county of Middlesex, C. W., has made application to the Commissioner of the State Land Office of the State of Michigan, under the act entitled "*An act to amend an act entitled an act to provide for the settlement and drainage of Swamp Lands by actual settlers,*" approved March 7, 1861, for the privilege of entering upon, occupying, draining, and improving that certain tract or parcel of the Swamp Lands of this State, situated and lying in the township of Koylton, in the county of Tuscola, in this State, described in the public surveys, made under the authority of the United States, as the S. ½ of N. E. ¼ of Sec. 25, T. 11 N., R. 11 E., containing 80 acres; and has made oath to said application, as required by law, and agreed for himself, his heirs, executors, and administrators, to observe and be bound by all and singular the provisions of said act, and of any other statute relating to said tract of land not impairing his rights under said act, and faithfully to abide by, keep, and perform, and be subject to all the terms and conditions of this present License, which issues upon said application:

Now know ye, That I, the undersigned, Commissioner of the State Land Office, for and in behalf of the State of Michigan, do hereby license and authorize the said Adam Woolover to enter and settle upon, occupy, drain, and improve the above described tract or parcel of land, containing 80 acres, subject to the terms and conditions following, that is to say:

1st. That said applicant shall enter into immediate possession and occupancy of said tract of land, and shall continue to reside upon, occupy, and improve the same for five continuous years.

2d. That said applicant shall, within three months from the date of this instrument, file with the Commissioner of the State Land Office a certificate from the supervisor of the

Hosted by Google

township in which the land is located, together with his own affidavit, that he is in the actual possession and occupancy of such land.

3d. That in case it shall appear that he was, at the date of said application, the owner, in law or equity, of forty acres of land, in any State or Territory of the United States, and that his said application is in this behalf willfully and knowingly false, this license shall be deemed void from the beginning, and all his right, title, and claim to said tract shall cease and become absolutely null.

4th. That said applicant has not heretofore, upon the application of himself or of any person in his behalf, or for his benefit, directly or indirectly, obtained any license under said act, or any other law of this State.

5th. That said applicant shall not cut, take, and carry away, upon or from said tract, any pine timber or other valuable timber, except for the sole purpose of clearing said land for actual cultivation; and in that case, so much as may be necessary to improve said land, and no more; and for the violation of this condition he shall be liable to all the forfeitures, penalties, and liabilities of a trespasser upon the State lands, as is now or as may hereafter be provided for by law.

On the breach of any one of which conditions, this license is to be void and of no effect in favor of said applicant.

And it is further provided, That if said applicant or settler shall not file his certificate and oath of settlement and occupancy, as above provided, or if the evidence of two witnesses under oath is furnished to the Commissioner of the State Land Office, that the clause above mentioned to prevent waste has been violated, then his claim shall be deemed as void, and the Commissioner of the State Land Office shall, from and after said time, sell said land the same as other swamp lands.

The said applicant is not at liberty to assign or transfer the present License; nor can he transfer his possession to another;

Hosted by Google

and no person taking possession under him, either with or without his consent, will acquire any right whatever to said land; but in case of the death of said applicant before the expiration of this License, his heirs-at-law, if in the actual possession and occupancy of the tract, will be entitled to all his right, interest, and estate therein.

And the said applicant also stipulates and agrees with the State, that he will faithfully occupy the said tract of land, and will drain the same conformably to the above mentioned act, and to the provisions of the act of Congress therein referred to, for the purpose of obtaining title to said tract, as provided by law.

And in case the said applicant shall actually occupy and reside upon said tract, for the period of five continuous years, and shall in all things comply with the above recited act of 1861, and keep and perform all and singular the provisions, terms, and conditions contained in this present License, he will at the end of that time be entitled to a certificate of purchase of said tract of land, and a Patent therefor from the State.

[L. S.] In testimony whereof, I have hereunto set my hand and affixed my official seal, at Lansing, this 29th day of May, A. D. 1866

CYRUS HEWITT,

Commissioner of the State Land Office.

On the back of the license is the following:

"Settler's License, under the act of 1861.

"To whom issued, and the date:

"ADAM WOOLOVER.

"MAY 29th, 1866.

"No. 4671."

Q. State whether or not you ever proved up your claim upon that land, and if you did, when it was.

A. I proved it up last fall.

Q. Do you remember the day of the month?

A. No, sir, I don't now.

Hosted by Google

Q. Can you state about the time? Can you state the month?

A. Well, it was the time they sat at Caro, I believe.

Q. What? The board of supervisors?

A. The supervisors,—yes, sir.

Q. Were in session in Caro?

A. Yes, sir.

Q. Last October?

A. I think it was.

Q. Do you know whether it was the regular session of the board, or not?

A. Yes, sir, it was.

Q. Can you write?

A. No, sir, I cannot.

Q. Did you sign any papers at the time you proved up your claim?

A. Yes, sir, I did.

Q. Examine that paper, and see whether that is your mark,—whether that is your signature or not. [Showing witness a paper.]

Yes, sir.

Mr. Manager Huston—There is an indorsement of Mr. Edmonds' upon the back of this paper, which the counsel admit is his handwriting. We would like, Mr. President, to introduce that paper also in proof.

The Presiding Officer—It will be received in evidence.

The paper is as follows:

[EXHIBIT F.]

4671. 9848. Sam'l V. Cornell, 27 Oct. '71.

Proof of settlement and occupation, to perfect title to lands licensed under the provisions of Act No. 229, Session Laws of 1859.

STATE OF MICHIGAN, } ss.
County of Tuscola.

On this twenty-seventh day of October, 1871, personally appeared before the undersigned, a notary public for said

Hosted by Google

county, Adam Woolover, who, being duly sworn, according to law, deposes and says, in relation to land licensed to him on the 29th day of May, 1866, as per license No. 4671, describing land as follows: S. ½ of N. E. ¼, section 35, T. 11 N., R. 11 E: That the same was for his own use, and for the purposes of actual settlement and cultivation, under the provisions of the act of the Legislature, approved February 15, 1859, "to provide for the settlement and drainage of swamp land by actual settlers." That he is now in the occupancy of said land, and has been residing thereon since the 10th day of June, 1866. That he has made the following improvements, to wit: Cleared eight acres; built a good log-house 18 x 24, in which there is 3 doors, 4 windows; have an orchard growing thereon of about 25 trees.

That he drained the same as follows: All that is neccessary to drain the part improved, so as to comply with the provisions of act No. 229.

Subscribed and sworn to before me, this 27th day of October, 1871.

ADAM $\overset{\text{His}}{\underset{\text{Mark.}}{\times}}$ WOOLOVER.

J. J. WILDER,
Notary Public, Tuscola County, Mich.

NOTE.—The above affidavits of settlement may be taken before a justice of the peace or notary public. The applicant must give a full description of the improvements, and of the manner in which the land is drained.

STATE OF MICHIGAN, }
County of Tuscola, } SS.

Before the undersigned, a notary public for said county personally appeared Chauncey D. Woolover, a resident of said county, who, being duly sworn, according to law, deposes and says that he is well acquainted with Adam Woolover, who subscribed to the foregoing deposition, and knows him to be the identical person who obtained a license for the land described therein, and that he is now, and has been residing upon said land since the tenth day of June, 1866, and that his statement

Hosted by Google

in regard to the improvements on said land, and the drainage thereof, is true.

Sworn and subscribed to before me, this 27th day of October, 1871.

CHAUNCEY D. His ⋈ Mark. WOOLOVER.

J. J. WILDER,

Notary Public, Tuscola County, Mich.

Indorsement and filing on the back, as follows:

"Sold to Cornell Oct. 27, 1871.

"License No. 4671.

"Proof of settlement and occupation received Nov. 1, 1871, and rejected.

"By the provisions of section 4 of act No. 229 of 1859, as amended by section 2 of act No. 108 of 1861, the licensee was required 'within three months after the date of said license' to file with the Commissioner of the Land Office, a certificate of the supervisor, and his own affidavit, that he was in the 'actual possession and occupancy of such land,' and also that if said proof was not so filed, the Commissioner should sell such land, the same as other swamp lands. It appears that the terms of the license were not complied with, and under the law his claim was deemed as *void*, and the land has been sold 'the same as other swamp lands.'

"The sale to Cornell is held to be valid, and Woolover will be notified that he may seek redress through the courts if he so elects.

"CHAS. A. EDMONDS,

"Nov. 1, 1871. "*Commissioner.*

Q. Do you know whether this land was or was not sold, or claimed to have been sold, to some other party, by the State,—this land levied upon,—section 35.

A. Yes, sir.

Q. To whom?

A. Mr. Cornell was there last fall, I understood by one of my neighbors; he was around there looking up this land.

Hosted by Google

Q. When was it sold to Mr. Cornell?

A. That I could not tell you?

Q. Did you see Mr. Cornell, when he was up there.

A. No, sir, I did not.

Q. You did not see him?

A. I did not see him.

Q. What improvements have you made on your land?

A. I have got me a house, an orchard,—eight acres I allowed it to be,—between eight and fifteen acres; I put it in eight acres for sure I would not be wrong.

Q. You put it in eight acres in your proof?

A. Yes, sir.

Q. You think it is more than that?

A. I think so.

Q. What is that eight acres and house worth now?

A. I would not take a thousand dollars for it.

Q. What was it worth when you went on?

A. I could not tell you,—this was right in the wilderness when I went.

Q. How far were you from any railroad connection?

A. Flint was the nighest.

Q. How far is that?

A. I cannot tell you exactly.

Q. Cannot tell how far it is from Flint?

A. No, sir, I cannot.

Q. How far are you from Vassar?

A. Twenty-four miles.

Q. Do you know how far it is from Vassar to Flint?

A. I do not.

Q. Do you know whether Mr. Cornell pretends to own or not to own the land, at the present time?

A. He does not, I believe.

Q. What has he done with it?

A. He sold it, I believe, to Hoyt & Draper, in Saginaw.

Q. What have Hoyt & Draper done with it?

Hosted by Google

A. They have turned it over to men in New York State or here.

Mr. Shipman—We are willing to allow all possible latitude in the examination of all witnesses, but it seems to me we are getting outside of every rule that was ever heard of. Not only what he has heard is attempted to be introduced, but all these immaterial matters about distances of roads. It seems to me unnecessary to take up the time of the Court with such matters.

Mr. Manager Huston—We propose to show, and I will state that we will show, by proof that I think he will not dispute, that this land was conveyed to Hoyt & Draper,—that they pretended to have conveyed it to somebody in the State of New York; and they, as attorneys, have commenced a suit in the United States Court against this party, in an action of ejectment to get possession of the land. And we also desire to show by these witnesses, that he applied to Hoyt & Draper to settle the matter up, and they asked him, I think, $800, as the least that he could promise.

The Presiding Officer—If an objection is made, of course the Chair must hold the members to the well-established rule, that a witness must not state anything that is hearsay. The Chair cannot do otherwise.

Mr. Shipman—We admit that this land was sold to Mr. Cornell; we admit all the facts as stated. Whether it has been transferred to another party, we know nothing about; and I submit it is immaterial. The fact of the sale is admitted, and it is not material whether he asked eight hundred dollars, eighty cents, or a thousand dollars for a settlement. We admit these things, and the examination, I submit, is immaterial further than that.

Mr. Manager Huston--It seems to me that it is very competent to show—

The Presiding Officer—Let me state to the counsel that there is no question for an argument, and it is not necessary to spend time upon it.

Hosted by Google

Q. State whether a suit has been commenced against you, with regard to this land, and if so, where?

A. In Detroit, sir.

Q. Have there been any papers served upon you?

A. Yes, sir.

Q. Did you ever apply to Mr. Cornell, or Hoyt & Draper, to purchase your lands?

A. I did, sir.

Mr. Shipman—We object that it is immaterial. It is material, perhaps, to show that the title thereby acquired is claimed to be a proper title. The evidence of the steps taken by them to compromise or settle this matter, we object to.

Mr. Manager Huston—We seek to show the efforts made to compromise. I will say further, we expect to show in this matter, the same as we will expect to show in the one from Shiawassee county, that the Commissioner had knowledge of the transactions, and that one of the clerks in the office was a partner of Mr. Cornell's.

The Presiding Officer—Do the Managers propose to connect this transaction of Hoyt & Draper with the witness, or is it between Cornell and the witness?

Mr. Manager Huston—We propose to show that Cornell and one of the clerks in the office were partners.

The Presiding Officer—I understand that you are inquiring about the transaction between himself and Hoyt & Draper.

Mr. Manager Huston—I asked him about the proposition between himself and Hoyt & Draper, and I think the circumstances will be such, when they are all developed, that it will be a question that can be fairly submitted to this Senate, whether Hoyt & Draper and Cornell and the clerk were not all interested in the matter; that this land was merely shifted around into Hoyt & Draper's name, and from them into the name of some party in the State of New York, and a suit commenced against this man in the United States' Court in Detroit, upon the theory, no doubt, that he was too poor a

Hosted by Google

man to go there and defend it, and under those circumstances they would get the land.

The Presiding Officer—If the Honorable Managers propose to do that, I will overrule the objection. I will take a vote of the Senate, if it is required.

Q. By Mr. Manager Huston—State whether you called upon any of these parties?

A. Yes, sir; I called upon Hoyt in his office.

Q. What conversation did you have with him? State what was said.

A. I asked him if he had this land, and he said he had. I asked him if he knew I lived on it, and he said he did.

Q. What did he say further?

A. I asked him how much he wanted for the land, to convey it to me; that I wanted to go on and work on my land, and prove it up. He said he would not take less than six hundred dollars for it. I offered him two hundred dollars if he would give it up, rather than go on any further.

Mr. Shipman—I ask for information. Is it proposed to connect Mr. Edmonds with this matter,—in this attempt to compromise?

The Presiding Officer—It is so understood.

Mr. Shipman—We will not object if they will do that.

Q.—What family have you?

A. Six children.

Q. Have you any other land?

A. I took up an adjoining farm.

Q. What improvement is there upon that?

A. Somewhere between twenty-five and thirty acres.

Q. Have you any other property excepting that?

A. No, sir.

Q. What is the adjoining farm worth?

A. I should not take less than one thousand dollars for it.

Q. That is all the property you have?

A. Yes, sir.

Hosted by Google

Mr. Manager Huston—I have a letter I will procure while they are cross-examining this witness, so as not to delay.

CROSS-EXAMINATION OF ADAM WOOLOVER.

Cross-examined by Mr. Shipman:

Q. How much land did you say you have got adjoining this piece?

A. Eighty acres.

Q. When did you get it?

A. I got that—I think it will be five years this next fall, coming.

Q. Can you give the date?

A. No, sir; I cannot.

Q. Was it before, or after the date of your license?

A. After.

Q. How long after?

A. Nearly a year afterwards.

Q. That license is dated May 29th, 1866, is it not?

A. I don't know. I don't recollect.

Mr. Shipman—It is so.

Q. You think it is a year after that?

A. Yes, sir.

Q. How much improvement do you say you have got on this licensed piece?

A. Eight acres.

Q. Cleared?

A. Yes, sir.

Q. Ploughed?

A. Yes, sir.

Q. When did you do that?

A. I have done it ever since I have been on it. I have raised crops on it ever since I have been on it.

Q. Cleared it the first year?

A. Yes, sir; I got some potatoes out.

Q. Have you got a house on this licensed piece?

A. Yes, sir.

Hosted by Google

Q. Does it stand on that?

A. Yes, sir.

Q. Are you sure?

A. All I know, I run it through with a tape line.

O. It is pretty near the line?

A. Yes, sir.

Q. Have you got a barn?

A. Yes; on the other lot.

Q. On the licensed lot?

A. Not on the licensed lot,—on the other lot.

Q. When did you build the barn there?

A. I did not have a barn for a couple of years after I built on the other lot.

Q. Have you cleared this land any further this year or this last year,—this licensed land?

A. Yes, I cleared some last fall.

Q. What are the lands. What kind of timber?

A. It is most all kinds of timber.

Q. On this licensed piece?

A. Most all kinds. Maple, beech, hemlock, basswood, and—

Q. Pine?

A. A litte pine on one corner.

Q. Only a little?

A. That is on one corner of it.

Q. Did you not cut off a great deal of the pine from that?

A. Not until last fall.

Q. How much did you cut then; 10, or 50, or 100,000 feet?

A. I cannot tell you anything about it; it is not measured: it lies there on the land, all but a little; I chucked a little in the creek.

Q. This was cut after you had notice of Cornell's claim?

A. No, sir, it was cut before, I think, and some was cut afterwards.

Q. How much cut before?

A. I can't tell you how much.

Hosted by Google

Q. The date?

A. It was all burned down, so I thought I would have to cut it to keep it from spoiling.

Q. The date of your proof is Oct. 28, 1871, I think. You swore to it before the clerk of Tuscola county?

A. Yes, sir.

Q. State what you did with the paper?

A. The license?

Q. No, sir. The affidavit that you had to swear to?

A. Mr. Wilder sent it to the office, I think.

Q. You left it to him to send it down?

A. Yes, sir; he is an agent.

Q. An agent?

A. Of swamp lands.

Q. You did not come down then?

A. No, sir. This is the first time I ever was here.

Q. Had you seen Cornell before that?

A. I had not seen him at all.

Q. At that time?

A. No, sir.

Q. What started you to make the proof at that time?

A. What started me to make the proof?

Q. Yes, sir.

A. Because my neighbor told me that there was another man trying to claim my land; he said he must be mistaken in the plat he had.

Q. When you heard of that you went and made this proof, to have it sent down?

A. Yes.

Q. This paper you swore to before Mr. Wilder is all the proof you filed?

A. No, sir; I have sent a letter here to the office by one of the clerks of the town. I sent a letter to find out what there was about it.

Hosted by Google

Q. I don't want the letter. That is all the proof you filed,—the affidavit?

A. Yes, sir.

RE-EXAMINATION OF ADAM WOOLOVER.

Re-examined by Mr. Manager Grosvenor:

Question. I did not understand whether you lived upon this licensed land from the time you entered; you have paid the license until the present time

Answer. Yes, sir.

Q. You have no other license, on any other place?

A. No, sir.

Q. That is your homestead?

A. Yes, sir.

Mr. Shipman—Who is testifying now?

Mr. Manager Grosvenor—I want to understand whether he has been living on this land continuously.

Mr. Shipman—I did not understand that there was any question asked.

Mr. Manager Huston—This letter which I have I do not care to read; it is a letter from the Deputy Commissioner, and the signature is admitted. It is a letter written to Mr. Wilder, the clerk of Tuscola county.

[The following is a copy of the letter referred to.]

[EXHIBIT U.]

STATE OF MICHIGAN, STATE LAND OFFICE,
Lansing, November 1, 1871.

J. J. Wilder, Esq., Caro, Mich.:

DEAR SIR,—Proof of settlement and occupation taken before you to perfect title to the S. ½ of N. E. ¼ Sec. 35, 11 N., 11 E., embraced in License No. 4671, issued by this office to Adam Woolover, May 29, 1866, has been received. In reply, I have to say that by the provisions of Sec. 4, Act No. 229 of 1859, as amended by Sec. 2 of Act No. 108 of 1861, the licensee was required "within three months after the date of said License" to file with the Commissioner of the Land Office,

Hosted by Google

a certificate of the Supervisor, and his own affidavit that he was in the "actual possession and occupancy of such land" and also that if said proof was not so filed, the Commissioner should sell such land the same as other swamp lands.

It appears in this case, that the terms of the license were not complied with, and, under the act, the claim was deemed to be void, and the land sold to S. V. Cornell, Oct. 27, 1871, "the same as other swamp lands." The sale therefore to Cornell is held to be valid, and Mr. Woolover has no redress except through the Courts.

Yours truly,

W. A. BARNARD,
Deputy Com'r.

Mr. Shipman—I wish to state one misapprehension here, in regard to Wilder being agent of the Commissioner. It is a mistake; he is not.

Mr. Manager Huston—I suppose he is what is claimed to be a local commissioner, as we have in all our northern counties.

The Presiding Officer—There is no proof, as the Chair understands, that Mr. Wilder was agent for the Commissioner.

Mr. Manager Huston—From whom did you get your license for this land?

A. I forget the gentleman's name now. It was at Vassar I applied to him, and he applied to the office to send it to me.

Q. Do you remember whether it was Mr. Bartlett, the editor of the *Pioneer?*

A. I cannot tell, it was so long ago.

Mr. Manager Grosvenor—In that estimate which you made about the value, I did not quite hear it. Did you estimate the value of the improvements aside from the land, or the value of the land and improvements together?

A. The value of the land and improvements together.

Q. What is the value of the improvements?

A. That is pretty hard to testify.

Mr. Manager Huston—As near as you can get at it?

Mr. Manager Grosvenor—On the license piece?

Hosted by Google

A. I would not do the improvements for $500 that I have done on it.

Q. Any ditching?

A. Yes, sir, what is required.

Q. Any roads?

A. Yes, I have helped make roads.

TESTIMONY OF L. M. WING.

L. M. Wing, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Grosvenor:

Question—Where do you reside?

Answer—I reside in Barry county.

Q. How long have you lived there?

A. I have lived there about eighteen years.

Q. Are you acquainted with a man by the name of Clark in the Land Office,—H. Clark?

A. I am not much acquainted with him. I have seen a man that bears that name since I have been here in this city.

Q. Since you have been here in the city attending as a witness upon this trial?

A. Yes, sir.

Q. Had you seen him before?

A. No, sir; not to my knowledge. I had no acquaintance with him before.

Q. Will you state whether you received that letter and that envelope? [Showing witness a letter and envelope.]

A. I did, sir.

Q. About what time?

Mr. Manager Grosvenor—We offer this letter in evidence; it is short, and I will read it.

Mr. Manager Grosvenor read the letter, as follows:

Hosted by Google

[EXHIBIT V.]

STATE OF MICHIGAN, STATE LAND OFFICE,
Lansing, March 12, 1872.

L. M. Wing, Esq., Orangeville, Mich.

DEAR SIR—Mr. Bowen desires me to say to you that the N.E. ¼ of N. E. ¼ of sec. 25 T. 2 N. 11 W., licensed by Daniel Dawn, can be purchased for $50; and if you can sell it for any advance upon that, you can have one half of the margin. Perhaps you can strike a customer for this 40, and make a little something. An early answer as to your views is requested.

Very respectfully,

H. C. CLARK.

Lock Box 157, Lansing, Mich.

Q. Was that letter written in response to any letter you have ever written to the office?

A. No, sir, I never wrote a letter to the office.

Q. Or any clerk in the office for information?

A. No, sir. The only letter I ever wrote to the Land Office in the world, I wrote to get some blanks.

Mr. Shipman—We do not care about any other matter than this.

By Mr. Manager Huston—Did you ever reply to that letter?

A. I did not.

TESTIMONY OF CHARLES CONLEY.

Charles Conley, a witness produced, sworn, and examined on the part and in behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Huston:

Question—Where do you reside?

Answer—In Sanilac county.

Q. What township?

A. Township of Marlett.

Q. How far are you from any railroad communication?

A. It is about eighteen miles.

Hosted by Google

Q. How long have you resided there?

A. I think six years in August.

Q. Do you own land in Sanilac county?

A. Yes, sir.

Q. Will you state the description?

A. I think it is the S. W. ½ of the S. W. ½, Sec. 7.

Q. Look at this paper, and that will probably refresh your memory. There is no such description as you have stated. I suppose the description is the S. fractional ½ of the S. W. ½ Sec. 6, town 10, range 12 east. Do you reside on that land?

A. Yes, sir.

Q. When did you go upon it?

A. I think it was five years ago in last August.

Q. Did you have a license for that land from the State?

A. Yes, sir.

Q. Look at that paper and see whether that is the license.

A. Yes, sir, that is it.

[The license was admitted in evidence, and is as follows:]

[EXHIBIT W.]

SETTLERS' LICENSE UNDER ACT 108, APPROVED MARCH 7, 1871.

To all to whom these presents shall come:

Whereas, Charles Conley, of North Branch, in the county of Lapeer, has made application to the Commissioner of the State Land Office of the State of Michigan, under the act entitled "*An act to amend an act entitled an act to provide for the settlement and drainage of swamp lands by actual settlers*," approved March 7, 1851, and the acts amendatory thereto, for the privilege of entering and settling upon, occupying, draining, and improving that certain tract or parcel of the swamp lands of this State, situated and lying in the township of Marlett, in the county of Sanilac, in this State, described in the public surveys, made under the authority of the United States, as the S. frl. ½ of S. W. frl. ¼ Sec. 6, T. 10 N., R. 12 E, containing 83 24-100 acres; and has made oath to said application, as required by law, and agreed for himself, his heirs,

Hosted by Google

executors, and administrators, to observe and be bound by all and singular the provisions of said act and of any other statute relating to said tract of land not impairing his rights under said act, and faithfully to abide by, keep, and perform, and be subject to all the terms and conditions of this present License, which issues upon said application:

Now Know Ye, That I, the undersigned, Commissioner of the State Land Office, for and in behalf of the State of Michgan, do hereby license and authorize the said Charles Conley to enter and settle upon, occupy, drain, and improve the above described tract or parcel of land, containing 83 24-100 acres, subject to the terms and conditions following, that is to say:

1st. That said applicant shall enter into immediate possession and occupancy of said tract of land, and shall continue to reside upon, occupy, and improve the same for five continuous years.

2d. That said applicant shall, within three months from the date of this instrument, file with the Commissioner of the State Land Office, a certificate from the supervisor of the township in which the land is located, together with his own affidavit, that he is in the actual possession and occupancy of such land.

3d. That in case it shall appear that he was, at the date of said application, the owner, in law or equity, of forty acres of land, in any State or Territory of the United States, and that his said application is in this behalf willfully and knowingly false, this license shall be deemed void from the beginning, and all his right, title, and claim to said tract shall cease and become absolutely null.

4th That said applicant has not heretofore, upon the application of himself or of any person in his behalf, or for his benefit, directly or indirectly, obtained any license under said act, or any other law of this State.

5th. That said applicant shall not cut, take, and carry away, upon or from said tract, any pine timber or other valuable

Hosted by Google

timber, except for the sole purpose of clearing said land for actual cultivation; and in that case, so much as may be necessary to improve said land, and no more; and for the violation of this condition he shall be liable to all the forfeitures, penalties, and liabilities of a trespasser upon the State lands, as is now or as may hereafter be provided for by law.

On the breach of any one of which conditions, this license is to be void and of no effect in favor of said applicant.

And it is further provided, That if said applicant or settler shall not file his certificate and oath of settlement and occupancy, as above provided, or if the evidence of two witnesses under oath is furnished to the Commissioner of the State Land Office, that the clause above mentioned to prevent waste has been violated, then his claim shall be deemed as void, and the Commissioner of the State Land Office shall, from and after said time, sell said land the same as other swamp lands.

The said applicant is not at liberty to assign or transfer the present License; nor can he transfer his possession to another; and no person taking possession under him, either with or without his consent, will acquire any right whatever to said land; but in case of the death of said applicant before the expiration of this License, his heirs-at-law, if in the actual possession and occupancy of the tract, will be entitled to all his right, interest, and estate therein.

And the said applicant also stipulates and agrees with the State, that he will faithfully occupy the said tract of land, and will drain the same comformably to the above mentioned act, and to the provisions of the act of Congress therein referred to, for the purpose of obtaining title to said tract, as provided by law.

And in case the said applicant shall actually occupy and reside upon said tract for the period of five continuous years, and shall in all things comply with the above recited act of 1861, and keep and perform all and singular the provisions, terms,

Hosted by Google

and conditions contained in this present license, he will at the end of that time be entitled to a certificate of purchase of said tract of land, and a patent therefor from the State.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Lansing, this fifteenth day of August, A. D. 1866.

CYRUS HEWITT,
Commissioner of the State Land Office.

R. 9985. H. H. Hoyt and C. S. Draper, Dec. 20, 1872.

Indorsement and filing on the back as follows:

"Settler's License under Act of 1861.

"To whom issued and the date:

"No. 4719. August 15, '66.

"$4.05. "STATE TREASURER'S OFFICE,
"*Lansing, August 15, 1866.*

"Received four and 05-100 dollars, being the excess over 80 acres in the License No. 4719 herein.

"H. L. PADDACK,
"*Clerk to the State Treasurer.*

"Countersigned:

"S. D. BINGHAM,
"*Deputy Auditor General.*"

Q. To whom did you apply to procure your license ?

A. In the first place, I went to Detroit, to Mr. Wilcox.

Q. In the second place ?

A. Mr. Manigle, I think, filled out the license.

Q. Filled out the application ?

A. Yes.

Q. Mr. Manigle lived in Koylton, Tuscola county ?

A. Yes, sir.

Q. How many acres are there in your piece of land ?

A. 83.24.

Q. How much did you pay, if you paid anything, at the time you procured your license from the State ?

A. $4. 05.

Hosted by Google

Q. What improvements have you made on that piece of land?

A. I have fifty acres chopped and fifteen improved.

Q. What buildings have you on the land?

A. I have me a house, that is all.

Q. What kind of a house?

A. A frame house.

Q. What are the improvements that you have made on it worth?

A. I could not say, hardly.

Q. Give us an estimate,—your best information?

A. Somewhere near five hundred dollars, I think they cost me.

Q. What is the land worth with the improvements?

A. I calculated it was worth a thousand dollars.

Q. State now if you know or do not know whether the State has sold, or claims to have sold, this land to any parties?

A. I believe they have, sir.

Q. To whom?

A. To Hoyt & Draper, in Saginaw.

Q. Did you ever call upon Hoyt & Draper in regard to the land?

A. Yes, sir; I saw Mr. Hoyt. I did not see Mr. Draper.

Q. What was the conversation you had with him?

A. I went to see how much he would take for it, and he said he could not tell me until he saw Mr. Draper, his partner.

Q. Did you see him afterwards?

A. No, sir, I did not see him afterwards; he wrote me a letter, and said he would take seven hundred dollars for the eighty.

Q. Who wrote the letter?

A. I think Mr. Hoyt did,—I am not sure.

Q. What was that land worth when you went upon it,—when you moved on to the land?

A. I could not hardly tell how much it was worth,—probably it was worth four or five hundred dollars.

Hosted by Google

Q. Was the township organized at that time, in which the land was situated?

A. I think it was.

Q. How far were you from any railroad connection at that time, in August, 1866?

A. About forty-eight miles, I should think.

Q. What do you know about the State having sold this land?

A. I wrote last winter to Lansing to find out what to do in regard to my deed, and I didn't get any answer, so I came myself, and when I got here they told me Hoyt & Draper had bought it; that they sold it.

Q. Who told you that?

A. I could not tell you the man's name—it was one of the clerks in the office, I think.

Q. To whom did you write, when you wrote to ascertain what you were to do?

A. I wrote to the Land Commissioner, in the State Land Office.

Q. State about the time you wrote to him, as near as you can?

A. I think it was about three weeks before New Years.

Q. How long did you wait for an answer?

A. Three weeks.

Mr. Manager Cochrane—Was this conversation with the clerk in the office?

A. Yes, sir; with one of them—I do not know which one.

Q. In the present office?

A. Yes, sir; the new office here.

Mr. Manager Huston—Did you retain a copy of the letter you wrote?

A. No, sir; I did not.

Q. Will you state the contents of the letter, as near as you can recollect it?

A. I wrote and asked him what I would have to do in regard to my deed.

Hosted by Google

Q. When you were at the office, did you get any information as to the time the land was sold to Hoyt & Draper?

A. I believe I did; but I don't recollect now. I think probably they got my letter before they sold my land;—I could not say, but I think likely, they did.

Mr. Manager Cochrane—Did you describe your land to the clerk,—give him a specific description?

A. Yes, sir.

Q. Did he look in any books in the office when he gave you this information; or how came he to make that statement?

A. I believe he did.

Mr. Manager Grosvenor—This information you derived from the clerk about the land being sold—was that the first information you had about its being sold?

A. Yes, sir; that was the first.

CROSS-EXAMINATION OF CHARLES CONLEY.

Cross-examined by Mr. McGowan:

Question. Did you write that letter?

Answer. No, sir.

Q. Who wrote it?

A. Henry Ballard.

Q. Where does he live?

A. In Lapeer county.

Q. What is his business?

A. I think he is a merchant.

Q. Were you present when the letter was written?

A. Yes, sir, I was with him.

Q. Did you see the letter directed?

A. Yes, sir.

Q. How was it directed?

A. To the Land Commissioner, State Land Office.

Q. Did you read the letter?

A. No, sir.

Q. Did you see the direction?

A. I saw him direct the letter,—yes, sir.

Hosted by Google

Q. Did you read the direction?

A. No, sir, I did not.

Q. Did you hear the contents of the letter read?

A. Yes, sir. He read the letter after he wrote it.

Q. What was in it?

A. I do not know that I could say what was in it,—I do not remember now.

Q. Give what you recollect of the contents of the letter.

A. I wrote to see what I would have to do in regard to my deed.

Q. The patent from the State?

A. Yes, sir.

Q. What else?

A. I do not remember anything else that I know of.

Q. What kind of paper did he write that letter on?

A. I suppose it was on writing-paper..

Q. Do not you recollect?

A. No, sir, I do not know that I do, particularly, now.

Q. Was it letter-paper or foolscap?

A. I do not remember now.

Q. Did he write on more than one page?

A. I think not.

Q. Was the letter brief?

A. I think so.

Q. About how many lines?

A. I could not say,—not a great many though.

Q. Whose name did he sign to the letter?

A. I do not know whether he signed my name or his. I presumed likely he signed my name.

Q. You have no recollection?

A. I do not recollect.

Q. Did he give any instructions how the letter was to be returned?

A. No, sir; I think not.

Q. Where does Mr. Ballard live?

A. In Lapeer county.

Hosted by Google

Q. Where?

A. In the north part.

Q. Where is his postoffice address?

A. North Branch.

Q, Where is yours?

A. My postoffice address is Marlett.

Q. Have you seen Ballard since?

A. No, sir.

Q. You do not know whether he received an answer or not?

A. I have seen him since, but I did not ask him if he received anything.

Q. You do not know whether your name was signed to that letter, or Mr. Ballard's?

A. No, sir.

Q. Why did you get Mr. Ballard to write the letter?

A. I thought probably he understood the business better than I did.

Q. You can write?

A. Yes, sir.

Q. Read writing?

A. Some.

Q. And print?

A. Yes, sir.

Q. You got your license in 1866?

A. I think I did.

Q. Have you had it in your possession ever since?

A. Yes, sir.

Q. Kept it in your house?

A. Yes, sir.

Q. Did you ever read it?

A. Yes, sir.

Q. Notice the conditions?

A. Yes, sir.

Q. How did you come to make application for your patent at that time,—at the time you got Mr. Ballard to write the letter?

Hosted by Google

A. Well, Mr. Roberts was there, and was inquiring about this piece of land.

Q. The piece you were on?

A. Yes, sir; and he said reports were made that I hadn't lived on it, and hadn't made any improvements, and he was sent to see; he said he was State agent, I think. So I mistrusted there was something wrong, and I got Mr. Ballard to write.

Q. Was that the first time you had ever written to the Land Office,—at the time you got Mr. Ballard to write?

A. I think it is.

Q. That is all you ever did before you came here, towards getting your patent,—your deed?

A. I think so; I was here two years ago last fall, and I was in the Land Office, and I told them I was living on my land and I asked them what I would have to do in regard to getting my deed when the time expired, and they told me to write to them when my time had expired, and they would tell me what to do.

Q. Two years ago last fall?

A. Yes, sir.

Q. Who did you have that talk with?

A. I could not say; I do not remember, now, the time when it was.

Q. Do you know whether it was the Commissioner, or his Deputy?

A. It was in the old Land Office.

Q. Did you tell him how long you had been on the land?

A. I told him I had been on it ever since I had got the license.

Q. Did you show him the license?

A. Yes, sir.

Q. You had the license with you?

A. Yes, sir.

Q. That was two years ago last fall?

A. Yes, sir.

Hosted by Google

Q. What time?

A. I think it was some time in October or November—I am not certain which.

Q. You came down here last winter?

A. Yes, sir.

Q. What time.

A. I left there next day after New Year.

Q. When you came to the office, whom did you talk with?

A. I talked with one of the Land Commissioners.

Q. Did you see this man [pointing to Mr. Edmonds]?

A. I do not recollect seeing him.

Q. Or having any talk with him?

A. No, sir. When I told him what I had come for, he told me he would talk with the Auditor General about it.

Q. The Auditor General?

A. Yes, sir. And he said he would give me leave to license another piece of land, I believe. I told him I did not want any more.

Q. The man you talked with, told you the land had been sold?

A. Yes, sir,—that the land was sold to Hoyt & Draper.

Q. Did he tell you when it was sold?

A. I think he did,—I do not recollect.

Q. Do you recollect how long before you had the talk, he said it had been sold?

A. I do not recollect,—not a great while, though,—a few days.

Q. He gave you the date?

A. I think not.

Q. He simply said, a few days before?

A. I think it was a few days before I saw him.

Q. How many miles do you live from Ballard's?

A. Somewhere near nine miles, I think.

Hosted by Google

RE-EXAMINATION OF CHARLES CONLEY.

Re-examined by Mr. Manager Huston:

Q. Do you know where Roberts resides,—the Mr. Roberts that you referred to?

A. Well, I believe he lives in Saginaw.

Q. Do you know in whose employ he was?

A. Hoyt & Draper's, I think.

Q.. Do you know his given name?

A. No, I do not.

RE-CROSS-EXAMINATION OF CHARLES CONLEY.

Re-cross-examined by Mr. McGowan:

Question. How do you know he is in Hoyt & Draper's employ?

Answer. Well, I dont't know, any more than what I have heard. I heard he was.

Q. Had you heard so at the time he was there?

A. No. I did not hear so then.

Q. Afterwards?

A. I heard so afterwards.

Q. He did not tell you so?

A. No, sir.

Q. How do you know he lived in Saginaw?

A. I think he told me he lived there.

Q. At the time he was there?

A. Yes, sir.

Q. Was he there more than once?

A. I cannot say. I did not see him any more than once.

Q. At your place there, and talked with you?

A. Yes, sir.

Q. To what place?

A. Well, the first I saw him was at Marlett, about two miles from my place, and he wanted to know where this piece of land laid, and I told him. This was on Saturday, and Sunday morning he came over. I was working in the lumber woods,

Hosted by Google

I think about three-quarters of a mile from my place, and he came there; and he went right over there Sunday morning.

Q. To look at your place?

A. Yes, sir.

Q. The land you lived on?

A. Yes, sir.

Q. What did he say about it?

A. He wanted to know how much I thought it was worth. I told him I thought it was worth a thousand dollars, and he said he thought it was. He said I had good improvements, and a good place.

Q. What did he say about your license, if anything?

A. He did not say anything at all about it, as I know of, in particular; I don't know of anything.

Q. Was there anything said about your title?

A. No, sir.

Q. Was there anything said about your patent?

A. I think not.

Q. About your proofs?

A. I think not.

Q. How did you come, then, to make application for your patent; what was there in that conversation that put you on your guard?

A. Well, sir, I mistrusted when he was there that there was something wrong, and I wrote right off.

Q. Did you mistrust from anything he said?

A. Well, I mistrusted he knew there had been complaint made that I was not living on the land, or had not made any improvements. I mistrusted from that.

Q. Did he say that he had heard so?

A. He said reports were made that I was not living on the land, and had not made any improvements.

Q. Did he tell you that on Sunday or the Saturday before?

A. Well, I think the Saturday before Sunday.

Q. Did you then look at your license?

A. No, sir.

Hosted by Google

Q. You went soon afterwards to Ballard?

A. Well, I think it was either the next Monday or the week from that Monday, I went to Ballard.

ADAM WOOLOVER RECALLED.

Examined by Mr. Manager Huston:

Question. Are you acquainted with Nelson Roberts?

Answer. I have seen the gentleman at my place.

Q. Where does he reside?

A. I believe he told me he resided in Saginaw.

Q. Do you know in whose employ he is?

A. He did not tell me; he told me he was a State officer.

Q. What did he say about your land?

A. He said I was complained of, and he had come to look about it; and he said he would report the next day; he would go to Saginaw, and he would report here.

Q. When was that?

A. That was the forepart of last winter.

Q. Have you had any conversation with Hoyt & Draper in regard to Roberts?

A. No, sir; I have not.

TESTIMONY OF OBED SMITH.

Obed Smith, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Huston:

Question—Where do you reside?

Answer—Alpena County.

Q. How long have you lived there?

A. About thirteen years since I first went there; moved my family there about eight years ago.

Q. What is your business?

A. My profession is that of a lawyer, attorney-at-law; I have followed lumbering, and building State roads.

Hosted by Google

Q. Have you had any business transactions with the State Land Office during the last year?

A. I have.

Q. Will you state what they were?

A. It has been in having lands reserved on contracts that I had, and also taking patents for the same lands.

Q. Where were the lands that you had reserved. Have you got the minutes of them with you?

A. They were generally in Alpena county, Presque Isle, and Sheboygan counties.

Q. Have you got the minutes of the lands with you?

A. I have, one that was furnished me from the Office; my minutes are not correct, from the fact that I often applied for lands which I did not receive any notice of their being reserved; the consequence was, my own minutes did not agree with these. These are the minutes of those that were reserved that had not been patented up to November, I think.

Q. Last November?

A. Yes, sir. These were what still stood in reserve to me,—charged to me on the books. I think there was some they sent here, however, that were reserved especially on another contract, but this is a list of lands that I received from the office then standing charged to me, on various contracts.

Q. When did you receive this list?

A. I got that on the 29th of November.

Q. Who furnished you that list?

A. Well, I think the Deputy Commissioner gave me that. I am not certain, but I think Mr. Barnard gave me that; he or Mr. Robinson handed it to me, and I don't remember which.

Q. Will you state whether you have had any difficulty in regard to these lands in the office since that time; and if you have, state the transaction fully.

A. I applied for a patent for some of these lands,—some that were in the county of Cheboygan.

Hosted by Google

Q. The question is asked me, whether it was since the 29th that you applied for it?

A. It was on the 29th, in 1871, that I made the first application. I have made other applications since.

Q. These lands had been reserved before that time by you, as I understand?

A. They had been reserved. On the 29th I made my application for four hundred and eighty acres of this land.

Q. On which page is the lands that you refer to--on the first or last page? [Referring to memorandum.]

A. The last page of this, included from there down [pointing to paper], in town 31 N. 5 E.

Q. You read over the descriptions of those that you applied for on that page.

A. The W. ½ of the N. W. ¼ of section 13, T. 31 N. of range 5 E. The S. ½ of the N. E. and the E. ½ of the N. W. ¼ of 14, same town and range. The N. E. ¼ of the S. E. ¼ of section 11, same town and range. The N. W. ¼ of section 12, same town and range. The N. E. of the N. W. of section 15. same town and range.

Q. Was there any others that you applied for?

A. I don't recollect all that was in. I recollect that in the same application there was some in 18.

Q. Read the description.

A. There is one description I recollect: the S. W. of the N. E. of 12, town 31 N., range 1 E.

Q. Any others?

A. I don't recollect; there was others. I made application in the same for others that I do not recollect, from the fact that they were patented at the time; but I don't recollect—yes, I think there was one more "forty" that I applied for at the time, which was not given me. It has been mine, however.

Q. Will you give the description of the other "forty?"

A. The N. E. ¼ of the N. W. ¼ of section 10, T. 31, 8 E. I think I applied for that; I am not positive, but I think I did at the time, and there was others.

Hosted by Google

Q. You speak of applying; what do you mean by that?

A. I applied for a patent, for a deed, having been reserved to me before. I applied for the patent and was denied, and there was others that I received a patent for at the time. I don't recollect what they were.

Q. Will you state why you were denied a patent?

A. The ground on which the denial was, I got in part from Mr. Edmonds in a written statement why he denied it; at the time they claimed that a Mr. Ripley had applied for the same lands, and that I had overdrawn the amount due me; it was on that ground that they set it up.

Q. When did they say Mr. Ripley's application was made?

A. They put it down here that it was made on the 28th.

Q. What month?

A. November; the day before I applied to have them patented to me. These lands were all reserved to me previous.

Q. Will you state what became of Ripley's application, if you know?

A. About a month afterwards, the latter part of December, I was in Lansing, and went in to see after I made my arrangement, and was informed that Mr. Ripley had relinquished his claim to the lands with the exception of some four hundred acres; that he had relinquished it, and I could have it,—some of the lands that was not stated at the time. I asked for the lands lying in Cheboygan county, and I was told that Mr. Ripley had relinquished his right, and a Mr. Hall of Detroit had made an application for the same lands, and that I must contest it with him; advised me to see him and compromise with him.

Q. What amount of lands were applied for, were you informed, by Mr. Ripley?

A. I think there was about sixteen hundred acres. The clerk drew a pencil mark along the edge of the paper that he gave me, commencing at—

Q. Read the description where it commences?

Hosted by Google

A. The description commences at the E. ½ of the S. W. ¼ and the S. E. ¼ of the N. W. ¼ of section 4, town 30, 7 E. That was the description where they commenced.

Q. When you was informed that Mr. Ripley had applied for these lands and you could not get them, was there anything said to you at the office about your applying to Mr. Ripley?

A. Yes, sir. Mr. Edmonds advised me to apply to Mr. Ripley, and compromise the matter with him.

Q. Did you do so?

A. I did apply to Mr. Ripley to allow me to take a deed of forty acres, and an eighty, that I was anxious to take, that I had sold. When I first went to the office, he asked me if I had seen the Deputy Commissioner, naming him. I told him I had seen him. He said it would be something as he said about it, and he declined to give it to me at that time. However, a few days afterwards, I saw him and he consented that I should take the patent of the "forty" and one "eighty," I think, if I recollect right, which I did.

Q. You are speaking now of Mr. Ripley?

A. I am speaking of Mr. Ripley,—especially of the new claim of Mr. Ripley. I took those patents.

Q. Now, in regard to when Mr. Ripley released his claim, and you was informed that Mr. Hall had applied for these same lands, what was you advised to do, at the office, in regard to Mr. Hall, if anything?

A. I was advised to see Mr. Hall, and compromise the matter with him.

Q. Did you see him?

A. I did not see him until after I had made other arrangements. I saw Mr. Hall afterwards. I went to Detroit to see him, and did not find him.

Q. What other arrangements did you make?

A. I employed Mr. Russell of Detroit, and Mr. Seager of this place, to get a mandamus, to put it into the court, and see, for the purpose of compelling a patent.

Hosted by Google

Q. Will you state what the condition of your account was at the office, at the time?

A. As they rendered the account to me, it left me in debt, on five sections, about twenty-one hundred dollars.

Q. When was that account rendered?

A. It was rendered at the time this was given me, on the 28th. That included only the contracts that I had held on the road leading from Alpena to Cheboygan. I also had another contract that I had assigned to me from Mr. Bathay. Taking that contract also in the account they furnished, we left that contract overdrawn; but I disputed the account that it was not correct, and it has finally been allowed that it was not correct.

Q. Well, how did it turn out to be, when it was found to be correct?

A. It turned out about four thousand dollars the other way.

Q. Your due?

A. Yes, sir, at that time. I am not positive that in taking out the two thousand dollars claimed on the other hand,—I am not certain that it was,—I don't know but that had to come out of it; I have not examined it far enough. The matter has finally been settled, and I don't recollect the circumstances as well as I otherwise should.

Q. When was Mr. Hall's application made?

A. Well, I did not know anything about the application until the last of December, when I came in and stated that I would take a deed of what lands I had in Cheboygan county. The Deputy Commissioner then informed me that Mr. Hall had applied for the same lands.

Q. What time?

A. And he put it down in here November 24, some four days before Mr. Ripley's application.

Q. How long before yours?

A. Oh, when my application was made for the patent, the lands were reserved to me.

Hosted by Google

Q. Yes, I know that; but how long before you applied for the patents did they tell you that Mr. Hall's application was made?

A. Five days before.

Q. Was there anything said to you when you was there on the 29th day of November in regard to Mr. Hall's application?

A. No, sir; there was nothing said to me. I also examined the maps, and examined as they were put down. I found no name, except, I think, it was "H. R.," put in initials; that was Mr. Ripley, however. The initials were put above mine on the same lands. There was no other name at that time on the maps.

Q. The question is asked again, when it was that you examined the plats and found no names on the plats except "H. R." above yours?

A. On the 29th of November.

Q. Did you examine the plats afterwards and find Mr. Hall's name?

A. I did, I think about the last of December,—perhaps the last Wednesday in December, I think it was, that I was here, and found Mr. Hall's name on the lands lying in the county of Cheboygan.

Q. Was it the Deputy or the Commissioner advised you to see Mr. Hall?

A. They both of them; I don't know as the Deputy did. Mr. Edmonds himself advised me to see Mr. Hall, and I could compromise with him. I do not recollect whether the Deputy advised me to do that or not.

Q. What were these lands worth,—that sixteen hundred acres?

A. Well, I valued about a thousand acres of them; considered them worth five dollars an acre. We have sold some of them since for seven or eight dollars. I think they will average five dollars an acre, what we got there.

Q. You say you sold the lands since. To whom have these lands finally been patented?

Hosted by Google

A. They have been patented—seven hundred and sixty acres of them have been patented to me, and some of them have been patented to Mr. Horn, of Cheboygan.

Q. Who is Mr. Horn ?

A. He is a man that looked up these lands,—has an interest in the lands in Cheboygan.

Q. To whom has the balance been patented ?

A. To myself; and those we sold to, I don't recollect. Wilson, I recollect for one, and some others.

Q. When did you get your last patents ?

A. The last patent I got yesterday.

Q. Have you got the assignment of Bathay's contract with you ?

A. No, sir, I have not; I thought I had it, but it is filed in the office.

Q. Do you remember when it was assigned ?

A. I don't recollect the day; I think it was the last of August or the first of September.

Q. 1871 ?

A. Yes, sir, as near as my recollection serves me.

Q. What contracts did you have at the time these reservations were made, Mr. Smith ?

A. I had five different contracts, either taken by myself or taken by assignment, on the Au Sable, Alpena and Duncan road, so-called,—the State road. There were five of them altogether.

Q. Was the scrip that you speak of, or the credit that you speak of having in the office on the 29th of November, as shown by the corrected statement,—was it matured or unmatured scrip, as it is termed ?

A. Part of it was matured and part unmatured; there was about, according to the statement given me,—there was between twenty-five and twenty-six hundred dollars of matured scrip upon the five contracts that I first mentioned; there was, however, afterwards allowed on the same contracts—found to be due on the same contracts—four hundred on one and

Hosted by Google

eight hundred and forty on another, over and above what they had set down, making something over three thousand dollars, —making about three thousand seven hundred dollars due, I think, as near as my recollection serves me now.

Q. How many different statements of your account did you get from the office before they got it correct?

A. I do not know that. I have not got it correct yet. I think I have had two or three.

Q. I wish you would state to the Court fully the efforts you made to get this matter closed up, and to get your account?

A. I spent several days here and in Detroit, at different times,—came here on purpose to see to it, and by the advice of Mr. Russell and Mr. Seager, I got Mr. Edmonds to agree to submit the matter to the Attorney General. I made a statement of fact, and I asked several questions that were submitted for his decision. The decisions are on file in the office, and when we got them Edmonds stated that he did not feel himself bound to abide them; that he would take the matter into consideration afterward. He did so, and finally, some time in March, I got a patent for the lands in Cheboygan county, and since I came here this time I have got a patent for the other 480 acres, that I applied for at that time, that were in dispute. Those were the only lands that were in dispute.

Q What has it cost you?

A. I have not kept any strict account of the expenses. Coming backward and forward has been considerable expense to me, and my time I consider worth something.

Q State the amount?

A. I do not know what my attorney will charge me. That is something I have not yet settled.

Mr. Shipman—We object to that. The bill of an attorney ought to be considered a private matter, and should not be brought out in the Senate.

The Presiding Officer—It is immaterial. A Senator has sent the following question, which the Secretary will read.

Hosted by Google

The Secretary read the question, as follows:

"Question—Did your reservations at any time exceed the amount of your unmatured scrip?"

A. No, it did not.

CROSS-EXAMINATION OF OBED SMITH.

By Mr. McGowan:

Question. Will you state when you first began to work as a contractor.

Answer. If you will allow me to look at the memorandum of some lands I located, I can tell you.

Q. Certainly; anything to refresh your memory.

A. I commenced about the 1st of August, 1869.

Q. Had you more than one contract?

A. I do not think that the assignment was perfected on the second one. I had an assignment. I do not think it was perfected at that time. I think not.

Q. How large a contract was your first one?

A. It was for thirteen miles of State road; 750 acres to the mile.

Q. You had a contract at that time in process of assignment?

A. I had another one in process of assignment. I was at work on it by myself, by agreement for $2,000 for a mile and a half.

Q. Your second contract was for $2,000?

A. It was $2,000.

Q. When did you have another contract?

A. I do not recollect the day on which that contract was finally passed here. The contract was finally made up even, after I had finished the work. I had made a contract with the local commissioner. Finding that a mile and a half did not cover the swamp that I was making it through, they consequently gave me another half mile, for which I received $550.

Q. That was your third contract?

A. Yes, sir, that was the third contract, I think the next year; I will not be certain.

Hosted by Google

Q. When did you enter into your fourth contract—about when; we do not care to be accurate?

A. I think it was in June, 1870, as near as my recollection serves me.

Q. What was the amount of the contract?

A. There were two contracts taken at the same time. One was four miles at $1,000. or 1,000 acres a mile, I cannot recollect which.

Q. And the other?

A. The other was for nine miles. It proved to be nine miles and a half, and eight rods over. It was taken at $1,600 a mile.

Q. That is your best recollection with regard to the transaction?

A. Yes, sir,—two sections a mile. That was it, $1,600 a mile.

Q. Had you any other contracts?

A. No other contract until I received the assignment from Mr. Bathay, of the contract for the other road.

Q. What was the extent of the Bathay contract?

A. It was the unfinished road,—28 miles, I think.

Q. You will get at it this way. What were you entitled to for the portion of the Bathay contract assigned to you?

A. About $22,000, I think it was. It is impossible for me to recollect the exact amount, from the fact that I have no minutes; but I think it was about $22,000.

Q. Was the Bathay contract assigned to you previous to November 29, '71?

A. Yes, sir, some two or three months. I think it was assigned to me the last of August.

Q. Had you had any land reserved to you on the Bathay contract previous to November 29, '71?

A. Yes, sir. I had some reserved to me on a special arrangement with Mr. Bathay, before the final acceptance of my assignment and the bail I put in.

Hosted by Google

Q. What reservations, which you had made on the Bathay contract, up to November 29, were made on the special arrangement with Bathay?

A. After the assignment, the contract was considered as mine, but there was some arrangement made at the time. We made new arrangements with Bathay, by his order.

Q. What I want to get at, is this: When were the first reservations made on the Bathay contract, in your own name, and on your own behalf?

A. I am unable to say.

Q. Was it previous to the 29th?

A. Oh, yes; previous to the 29th.

Q. In making the reservations in the Land Office, under these various contracts, is the contract designated, under which the reservation is made?

A. Not many of them. Some are, and some are not.

Q. What was the fact with your contracts?

A. In the first place they were designated, some few of them, and then the order was given, and simply on my "contract," or "contracts," just as I happened to make it; but some of them were given specifying the contract in some particular cases, and some were not.

Q. Will you describe to the Senate how these reservations are made?

A. They are made by request to have the land reserved.

Q. What kind of request,—in writing, or verbally?

A. Writing, always. I don't think there were any reservations made to me except what were made in writing. I do not think there were. I do not recollect of ever having any.

Q. Were not a large portion of your reservations made upon special contracts?

A. No, they were not. I think the largest proportion of them were made simply to "reserve to me." The accounts were all kept, and as I took patents they were taken from dif-

Hosted by Google

ferent orders that I had from the Commissioner, and audited by the Board of Control.

Q. Are not these accounts in the Land Office kept separately with each contract?

A. I think they informed me not, in my case. I think Edmonds told me they were not. They should have been so, I think he said, but were not kept.

Q. A general account was kept with you?

A. I have never examined the books, so that I cannot say in what manner the books were kept. I can only say what I have been told. I was told by Edmonds that the account was kept against me until the other contracts were finally accepted, and then that he altered the arrangement and kept the account of the Bathay contract separate, and that, in fact, I suppose was the first cause of the difficulty.

Q. In making your reservation, did you make any distinction between matured and unmatured scrip?

A. Oh, no.

Q. You made your reservations irrespective of whether your credit had matured or not?

A. Always. I never intended to reserve after I had matured scrip. I sent for the patent direct. I did not intend to. I found out I had done so in one or two instances.

Q. When was it you first had any difficulty with the Land Office, with reference to your account?

A. November 29th.

Q. Had there been any account rendered you at the office previous to that time?

A. I think a Deputy Commissioner sent me a little statement some time in March, 1871. I think he sent me one and a letter, stating that he did not consider that I could reserve lands on matured scrip; that so much of my scrip had matured, and I had reserved lands to the amount of the unmatured scrip.

Hosted by Google

Q. He sent a letter in March to you?

A. I think he sent it to me some time in March.

Q. 1871?

A. I do not know but that it was earlier than that. I recollect reading such a letter a few days ago, in looking over the papers.

Q. You did not bring the letter with you?

A. I might have brought it, but I think not. I took the whole bundle out of my satchel, and left them home on account of their weight.

Q. On November 29th you came here?

A. Yes sir, I came here on the 28th.

Q. Spent several days?

A. I do not recollect how many days. I went to Detroit and came back here.

Q. That was the time you looked over your account with the Commissioner and clerks?

A. Yes, sir.

Q. And that was the time they told you you had overrun the account due you?

A. Yes, sir.

Q. Did you examine the books with them?

A. I do not know that I examined any books in the office. I requested different accounts. They were made in different ways. They were finally made up,—the amount of the account,—not the reservations, however. They made up the accounts, and the amounts that had been paid me, by issuing patents, and by an entry, called selling scrip,—my orders.

Q. Who made those accounts for you?

A. I saw several clerks there. I do not know their names.

Q. Do you know Robinson, the book-keeper?

A. Yes, sir; I know him.

Q. Did he make the account for you?

A. I cannot say whether he made them or not. I don't think he did. I think not.

Hosted by Google

Q. Now, in reserving the lands on your contracts, did you give orders to other men to reserve?

A. Yes, sir.

Q. Were they entitled, under these orders, to reserve lands in their own name?

A. Yes, sir; they were entitled to reserve lands up to a certain amount, if they chose.

Q. Within certain limits?

A. Yes, sir.

Q. Did you give any orders to any man to reserve lands in your name?

A. I do not recollect ever giving any to reserve in my name

Q. Do you think you gave orders to men to reserve lands in their own names under each of your contracts?

A. Yes, sir, under the general contracts. I do not think I ever designated any particular contract in those orders, but generally wrote them in this way: "Allow so and so to reserve such lands as they may designate, to the amount of 1,000 acres, and charge to my contract." That had been the practice in charging lands.

Q. Now, Mr. Smith, did you not find this to be the fact,—November 29th, when you were looking over the lands,—that many of those orders were only partly drawn or signed?

A. Yes, sir; some of them not at all.

Q. And some, where you had given orders for lands of a thousand acres, they had only reserved four or five hundred acres.

A. Some, not more than eighty or forty perhaps.

Q. Did you not give a great many of those orders?

A. I do not recollect as I had given more than two of those orders, except orders that carried the scrip,—the orders that carried on them the right to patent these lands. The orders I had given were charged to me,—those were correct.

Q. These others, where you had given orders to reserve lands on unmatured scrip, and they had not reserved up to the

Hosted by Google

amount of the order, did not the Commissioner tell you that he felt bound by that order, and the man to whom you had given the order could demand the land of him, and did he not take out the whole order from your account?

A. He did so; that was it. He took out the whole order; that was the way it was done at that time.

Q. Was not that what made the discrepancy between your account and his?

A. That and $1,750 charged to my contract,—the Bathay contract I think,—said to be due to Mr. Preston, which he denied. Mr. Preston told me he had no account here or anything of that kind, and had not had for two years past.

Q. $1,750?

A. I think it was $1,750, or something there.

Q. Charged to the Bathay contract?

A. Yes, sir.

Q. In favor of Mr. Preston?

A. Yes, sir.

Q. Mr. David Preston, of Detroit.

A. Yes, sir, David Preston, the banker.

Q. Was that charged to the Bathay contract, after that contract was assigned to you?

A. I never knew when it was charged, but the first I ever knew of that was when it was put in my account. The account furnished me was the first I knew anything about it.

Q. Then the balances on these orders and the amount charged to the Bathay contract, in favor of Mr. Preston, was what made the difference in the account?

A. No, sir, not all,—$1,240 on the other contracts, that was also left out.

Q. What was there about that?

A. There was $400 that was due on the contract and had been audited; $400 of the audited account had not been filed in the office,—was left in the office of the Commissioner of State Roads by mistake,—but it was still due on that contract.

Hosted by Google

Q. Of that $400, the Commissioner of the Land Office had no notice?

A. They had the contract in their office. The contract was filed in their office to show how much I had a right to.

Q. You say the $400 that was audited was left with the Commissioner of Swamp Roads?

A. Yes, sir; I had no credit any way, either matured or unmatured, and the other $400 was an allowance on the nine miles near Cheboygan.

Q. How did you get that allowance on the Cheboygan contract?

A. On surveying the road and finding there was that much.

Q. Which overran the original contract?

A. Yes, sir.

Q. Had the Commissioner any notice of it?

A. I do not think he had anything but a verbal notice I had sent to him to that effect.

Q. There was $400 of that?

A. $840 of that.

Q. Of the surveys on the Cheboygan contract?

A. Yes, sir.

Q. That went to make up the difference between you and the Commissioner?

A. Yes, sir.

Q. Will you state how much land, which you had reserved, had been marked up to Ripley on the 29th?

A. I think it was about 1,600 acres; it may be more and it may be less. I have got it right here; it can be easily looked up.

Q. It cannot vary much from that?

A. I do not think it will vary much.

Q. Very well, we will leave it right there, then. Did the Commissioner state to you, at that time, on what contract he marked those lands up to Mr. Ripley?

A. He stated that the lands were overdrawn, and the consequence was, he considered they were in the market.

Hosted by Google

Q. How did he get at the lands that were overdrawn,—did he take any of your lands anywhere, that you had reserved?

A. I suppose that they called that the amount of what I had scrip to pay for. I suppose they did.

Q. Taking them in the order of the date, as the account says?

A. Yes. I think that was the way they were taken.

Q. He took your reservations in the order of their date, down to the time that they showed to have amounted to that contract?

A. Yes, I suppose that is the way.

Q. That is what the statement shows?

A. Yes, sir.

Q. And all below that he said he considered in the market?

A. Yes, sir.

Q. Taking the last land that you had marked up?

A. Yes, sir, taking the Bathay contract,—throwing thatout He said it would be tested, and he would look into it. He did finally look into it, and gave me a patent for them.

Q. Ripley looked into it?

A. No, sir. The Commissioner looked into it. He handed Mr. Seager a patent for that in Cheboygan county, and after I came away this time, after hearing, he gave me a patent for the last.

Q. The steps which you took to procure a mandamus,—was that with reference to the land that was marked to Ripley?

A. It was in reference to all that they held.

Q. Had you not already compromised with Ripley for the land?

A. No, sir; I never got anything from Ripley. He released me forty acres, as a matter of favor, I suppose; and the other, I went down to see him the second or third time, and I offered him one hundred dollars to release, on account of a man's supposing that he had a deed to the land, and commenced cutting some timber on it, which I had to stop.

Hosted by Google

Q. But I understand that of all the land to Ripley, you only got forty acres back.

A. I gave him one hundred dollars, then I offered him two hundred dollars, and he refused to receive it. Then I told him I would proceed as I did with the others, and that I got a deed for the other day. After hearing from the Commissioner, he concluded I was entitled to it under the ruling of the Supreme Court.

Q. In what case,—what ruling of the Supreme Court did you consider yourself entitled to it under?

A. Well, the case in the Upper Peninsula. I forget the case.

Q. The parties?

A. It was a county against the State.

Q. Houghton county?

A. Yes, sir, I think that was the case. I considered that I had a right to select the land.

Q. The County of Houghton *vs.* The Commissioner of the State Land Office; is that the case?

A. I think it is,—that had something on the subject; and another case. He considered Ripley had not made a proper aplication for the land.

Q. You have finally got all the land you asked patents for?

A. Yes, I have got all the land I wish.

Q. The lands that were marked up to Hall,—that you had reserved,—how many acres was there of those?

A. I think something over one thousand acres.

Q. Have you got all of them back?

A. I have not got all. There is some that there is a discrepancy in the title of, from the United States to the State. There are some of the lands that were reserved to me, that there is a defect in the title of.

Q. As between you and Hall,—it is all right?

A. As between Mr. Hall and me. I have a patent for all the lands he reserved.

Hosted by Google

Q. Did Mr. Hall agree to release?

A. He did not agree to release; but he said he would if he found it was correct, and I understood at the office that he had released. I don't know as he ever told me that he would release or not; and I don't know but he did. I don't recollect.

Q. When was it that the questions were submitted to the Attorney General?

A. I think about the first of January, if I recollect right.

Q. Who wrote out those questions?

A. I wrote them out myself.

Q. And you submitted whatever questions you then desired?

A. I made a statement of the facts, and made a question to each statement, and submitted them to Mr. Edmonds.

Q. You say the opinion of the Attorney General has been filed?

A. Yes; Mr. Edmonds requested the opinion of the Attorney General. I did not make any request of the Attorney General; he made it himself.

Q. On your written statement?

A. Yes; he made a written request.

Q. Were these lands which were marked up to Hall—which you found marked up to Hall,—any portion of them the lands that had been marked up to Ripley?

A. Yes; the same lands.

Q. One thousand acres of the sixteen hundred acres?

A. Yes, sir.

Q. Did you examine all of those lands on the 29th of November?

A. I cannot say that I did all of them. I did most of them.

Q. Are you sure there were any marks on the land excepting the initials "H. R.?"

A. I think there was no other. I asked the clerk—he was showing me the blanks—if they were all in that situation. He said they were; and I think I stopped then. I think there was one map that he had not looked over. I asked him if they were all in the same situation, and he said they were.

Hosted by Google

Q. When did you again inspect the maps, and find them marked to Hall?

A. About the last of December or the first of January.

Q. What was the mark that indicated they were marked up to Hall?

A. "O. H." or "E· H.";—"E. H.," I think.

Q. His initials, as you understood it then?

A. Yes, sir. The Deputy Commissioner marked these; he marked these in a different way,—he said, Mr. Hall. When I applied for these, he said I could not get them at present, they would have to be looked into, and he marked them in this way: he put that mark on. [The witness here exhibited a paper containing some checks in pencil.]

Q. It has a pencil check opposite?

A. Yes, sir; he marked them in that way, and the other was—all of them being claimed by Ripley; that was the first mark.

Q. Now, I understand you that on this account which was rendered you by the Commissioner or Deputy, was marked a check with a pencil, on the land that had been reserved to Hall?

A. The lands claimed. He said they were not reserved, but they were only marked for Hall, above me.

Q. On his application?

A. Yes, sir; his name was simply put on there, and they were to be adjudicated afterwards.

Q. You said you had the written decision of the Commissioner concerning the matter.

A. I have one here among these papers.

Q. Will you let me see that?

A. [While searching for the paper.] Some of these applications were made informally,—they were asked verbally,—the question whether I could have those afterwards, and I was told I could not have them, and when I concluded to get the mandamus I went in and made a formal application, and got a

Hosted by Google

formal decision on the back of it. Here it is, I had in my pocket.

Q. Did you not state that there were two or three accounts that were made out to you by the Land Office?

A. I got one account made out in the first place.

Q. State how many you have.

A. There was one made and then another made on the Bathay contract, and then there is two or three made out, including all the other contracts as they occurred along.

Q. Where are those statements?

A. The statements, I think, are in Alpena. I may have one of them here. I don't know whether they are or not.

Mr. McGowan—We shall want these statements. We shall claim we are entitled to them.

Witness—I will bring them in as far as I have them, or I will go after them now.

Q. Where are the contracts filed and kept between contractors and the State?

A. I think they are kept in the Land Office. I think they are copied in that way, and I think there is a copy kept in the State Road Commissioner's Office. I think they file either a copy or the original with the Land Office, for the purpose of enabling—

Q. That does not make any difference what for. Is it not a fact that the original is filed in the Road Office, and all there is any record of in the Land Office, it is for his own convenience?

A. I don't know; I know when I look, that I always find the copy there in the Land Office, or the original copy. I don't know why they are put there; for I don't know enough about their way of doing business to know.

Q. Was it not claimed by the Commissioner at the Land Office, after he received the opinion of the Attorney General, that there was a conflict between that opinion and the Supreme Court?

Hosted by Google

A. I don't recollect of him claiming anything of the kind.

Q. He had said to you that he did not feel that he was bound by the opinion of the Attorney General?

A. He said he did not feel himself bound by the decision of the Attorney General.

Q. Did you not say, in addition to that, that it was in conflict with the decision of the Supreme Court?

A. I cannot say all that was said. I recollect of citing the decision. I found a certified copy of it.

Q. Then the differences between you and the Commissioner were both differences of fact and differences of law?

A. Yes, a difference of law and opinion.

Q. You talked upon the decision of the Supreme Court bearing upon the question?

A. Yes, sir; I think that he contended that that did not refer to my case at all. I think that was his opinion. His advice to me was to go to Mr. Hall and compromise with him.

Q. Did you talk in regard to the law bearing upon the question of order of parties where they had not drawn the full amount?

A. Yes, that was the greatest contest we had.

Q. There was no question there but what they had drawn the amount of their order?

A. There was no question but that was indorsed upon the orders as they had then. They had not done so before, and I objected because the account had been entered before the lands were charged to me, or the persons who were sent. On some occasions the largest amount of land had been charged. It was generally in this way: "Paid to L. M. Mason fifty dollars." If there was no charge made until they applied to me for the order to have a patent changed, they did,—and that had always been the former practice, until that time. I objected to charging of the orders while there was nothing on them, on the ground that they never took any, and I was entitled to go along with it. It should not be charged to me.

Hosted by Google

It was the decision of the Attorney-General, that the lands should be charged to the order. The practice of the office—of Mr. Edmonds—previous to this decision was, that if you send an application for one thousand acres of land, he would only reserve the "forty" to you,—that was all.

Q. After that, he did charge up the whole one thousand acres?

A. I know he charged me with the whole order.

Q. If you sent him an order for one thousand acres, he would charge you the whole amount?

A. If I sent to have such an amount charged to me, he charged me with the whole order, which never had been done before that. That was the amount of it.

Q. He contracted with you, then, that he would be liable to the man up to the amount of the whole order?

A. I don't recollect whether he made that assertion or not. I don't recollect about it.

Mr. McGowan—The testimony of this witness in connection with the Land Office, covers a good deal of time, and it is going over a subject that is somewhat intricate, involving the examination of a good many records and files. It is possible that we may want to recall him again. We will now omit the balance of the cross-examination, and reserve the right to recall him.

RE-EXAMINATION OF OBED SMITH.

Re-examined by Mr. Manager Huston:

Question. Have you that statement?

Answer. Yes, sir.

Mr. Manager Huston—I desire to put this statement in evidence.

The Presiding Officer—The Secretary will mark it.

The following is a copy of the statement:

Hosted by Google

[EXHIBIT X.]

OBED SMITH'S RESERVATION.

SUBDIVISION.	Section.	Town.	Range.	AREA. Acres.	100ths.	REMARKS.
s e ¼ of s w ¼	14	29 n	4 e	40		August 18, 1869.
s w of n w	35	29 n	4 e	40		" "
n e of s w and s w of n w	27	38 n	5 e	80		December 26, 1869.
s w of n w	36	29 n	4 e	40		September 2, 1869.
n e of n e	14	31 n	8 e	40	D	January 5, 1870.
n e of s e	11	30 n	6 e	40	X	" 8, 1870.
s e of s w	5	30 n	6 e	40	X	----------
n e of s w	20	30 n	2 e	40	X	----------
s e of n w	28	30 n	2 e	40	X	----------
n w of s w	34	30 n	6 e	40	X	----------
n ½ of s w	10	31 n	8 e	80	D	Jan. 17, 1870.
s of n w and n e of n w	24	33 n	5 e	120	X	Jan. 31, 1870.
s w of n w	24	30 n	2 e	40		Jan. 26, 1870.
s of s e	30	30 n	7 e	80		March 30, 1870.
n e of n w	34	32 n	3 e	40		L. M. Mason.
s w of n e	35	31 n	4 e	40		----------
w of s w	27	29 n	9 e	80		July 6, 1870.
s w of n w	22	33 n	7 e	40	X	July 23, 1870.
n e of s w	8	28 n	8 e	40		July 27, 1870.
n w of n e	17	"	"	40		----------
s e of n e	14	"	"	40		----------
s e of s w	20	"	"	40	X	D. Smith.
n e of s e and s e of n e	27	"	"	80	X	D. Smith.
s e of n w and s w of s e	27	"	"	80		----------
n w of n e	29	"	"	40	X	D. S.
n ½ of n e	34	"	"	80		D, n e of n e X D.
s w of s w	23	"	"	40		----------
s e ¼ of n w ¼	21	31 n	7 e	40		Aug. 9, 1870.
n w of s w	6	28 n	8 e	40	X	Sept. 17, 1870.
s e of s w	11	"	"	40	X	----------
s w of n e	17	"	"	40	X	----------
n e of s w	8	32 n	7 e	40		Oct. 29, 1870.
n w ¼ and n of s w	24	36 n	2 w	181	60	Nov. 12, 1870.
n w of s e	24	"	"	40		----------
n e of n w	34	33 n	7 e	40		C. W. Richardson.
s w of s e	23	34 n	4 e	40		----------
X e of s w and s e X of n w	4	30 n	7 e	120		Ripley, Nov. 28, 1870.
n w X of s w	3	"	"	40		----------
s e of n w	1	"	"	40		----------
n w of s w	5	37 n	2 w	40	X	Nov. 29, 1870.
n e of s e	6	"	"	40	X	E. Hall applied.
s w of n e and n w of s e	8	"	"	80	X	Nov. 24, 1871
s of s e	6	"	"	80	X	----------
n e of n e	7	"	"	40	X	----------
n of n e	21	37 n	1 e	80	X	Dec. 16, 1870.

Hosted by Google

SUBDIVISION.	Section.	Town.	Range	AREA. Acres.	100ths.	REMARKS.
s w of n e	18	87 n	1 e	40		D'e'd.
s X of s e	27	32 n	8 e	80		Dec. 26, 1870.
w X of s w	4	31 n	8 e	80		Dec. 27, 1870.
w X of n e	2	"	"	84	78	D. Jan. 11, 1871.
s of s e	6	36 n	1 e	80		.....
s of s e	9	36 n	1 e	80	X	.....
w of s w	5	36 n	1 e	80	X	.....
w of s e	29	37 n	1 w	80	X	.....
n e ¼ of n w ¼	10	31 n	8 e	40		D R March 27, 1871.
n e fl ¼	24	36 n	2 w	63.66	X	May 16, 1871.
e ½ of s e ¼	9	36 n	1 e	80	X	.....
w of n w	13	31 n	5 e	80		June 15, 1871.
s of n e and e of n w	14	"	"	160		.....
s e of s e	11	"	"	40		.....
n w ¼	12	"	"	160		.....
n e X of n w	15	"	"	40		.....
				3,770	04	
Deduct				80		L. M. Mason.
				3,690	04	
Deduct				80		C. W. Richardson.
				3,610	04	

"Indorsements and filing on the back as follows:

"List of Lands Reserved for Obed Smith. B.

"Obed Smith's Reservation, Duncan, Alpena, and Sauble Road. Page 211."

Q. I want to ask you if you ever saw the application of Mr. Hall, that was made for these lands, in the office?

A. I don't recollect as I did. I believe I did, too, finally.

Q. Do you know whether that application is in the office now, or not? Have you had any information regarding it?

A. I understood that it was, not a great while ago, when I got the patent.

Mr. Manager Grosvenor—I desire permission to recall Mr. Wing, in regard to a matter.

L. M. WING RECALLED.

Examined by Mr. Manager Grosvenor:

Question—Are you acquainted with a man by the name of Bowen?

Answer—I am, somewhat.

Hosted by Google

Q. Where did you first see him?

A. At my house in Barry county.

Q. When?

A. I think that it was in February, 1872.

Q. Before you received this letter that you have had here?

A. Yes, sir.

Q. What was his business there?

A. He was looking out some land, so I understood at the time.

Q. State lands?

A. I do not know.

Q. Had he a description of any swamp lands?

A. Not as I know of.

Q. Did he make any inquiry in relation to any?

A. He did not.

Q. Did you have any conversation with him in relation to the land referred to in that letter?

A. I did.

Q. What was that?

A. I understood he had been looking out some lands. I knew the section of country that it lay in, and it was very poor land, and I rather jokingly said to him: "Stranger, if you wish to purchase any more such land as that, I can tell you where you can get a forty-acre lot for fifty dollars. It is State land, and you can purchase it for fifty dollars." He asked me what kind of land it was, and I said it was not very good land to settle on,—it was better to trade on,—and if he was a trading man, it might pay him to buy it to trade on.

Q. What "forty" did you refer to?

A. I forget the description of it exactly. It is in the township referred to in my letter. It is in town 2 north of 11 west.

Q. Did you make any request of him to ascertain, and give you any information, from the office, relating to that land?

A. I did not.

Q. Did you know at that time that he was a clerk in the Land Office?

Hosted by Google

A. I did not.

Q. When did you first learn the fact that he was a clerk in the Land Office?

A. I first learned the fact so that I knew it positively, when I saw him there, which was on Monday.

Q. You saw him in the Land Office?

A. Yes, sir, on Monday.

Q. Did you recognize him as being the same man you saw at your place?

A. I did.

Mr. Shipman—We have no questions.

TESTIMONY OF JAMES T. MUNROE.

James T. Munroe, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Huston:

Question. Where do you reside?

Answer. In Eagle, Clinton county.

Q. Are you acquainted with William A. Barnard, Deputy Commissioner of the Land Office?

A. I am, some; I have seen him several times.

Q. How long have you been acquainted with him?

A. Somewhere about a year and a half, I should say.

Q. Have you had any business transactions with him in connection with lands?

A. Well, somewhat.

Q. Will you state whether you ever purchased any land of him; when it was?

A. I think it was in February that the patent was made out.

Q. What year?

A. 1871.

Q. Where was it that you saw Mr. Barnard?

A. Well, I saw him one evening in Seager's office. I was talking with him.

Hosted by Google

Q. Is Mr. Seager's office in Lansing?

A. Yes, sir; and I saw him in the old State House.

Q. That is, the old offices?

A. Yes, sir.

Q. What was the talk you had with him in regard to the land?

A. Well, I was talking with him about trading him a horse for some land, and I looked at the land and made a trade with him.

Q. Where was the land?

A. Well, that is the patent,—I think it is in the town of Alba.

Q. What county?

A. Saginaw county.

Q. What is the land worth?

A. Well, sir, I don't know what it is worth.

Q. In your judgment?

A. I think I offered it for eight hundred dollars. The land was not calculated to be worth that when I got it, of course. Perhaps it would not bring that now.

Q. State to the Court fully your transaction with Mr. Barnard in regard to this piece of land.

A. I traded him a horse for the land. He went down,—I think he said Mr. Hewitt owned the land,—I don't know as he did,—and saw him at the head of the stairs, in the old State Offices. He asked me if my horse was out at the post. I told him it was, and we rode down to Mr. Hewitt's. He stopped there a moment and we made the trade, and he sent me the patent.

Senator Ball—What was that?

Witness—He rode down to Mr. Hewitt's bank, I think, and we made the trade, and he got a boy to go down and fetch the horse back, and he sent me a patent for the land.

Q. Did you go into the bank?

A. No, sir.

Q. You don't know what was done there?

A. No, sir.

Hosted by Google

Q. Is this the patent you refer to?

A. Yes, sir.

Mr. Manager Huston—We offer in evidence the patent.

The following is a copy of the body of the patent:

[EXHIBIT Y.]

No. 22879.

Whereas, Cyrus Hewitt, of the county of Ingham, Mich., on the twenty-eighth day of January, 1871, purchased from the State of Michigan, etc.

And wheras, the said Cyrus Hewitt has paid, etc., the sum of fifty dollars and all legal interest, etc., as appears by the certificate No. 9005, for swamp land. Said certificate, etc., has been duly assigned to James T. Munroe, of Clinton county, Mich. Now, therefore, I. Henry P. Baldwin, Governor, etc., do issue this patent, etc., unto the said James T. Munroe, etc., the following piece of land, etc.:

The northeast quarter of the southwest quarter of section twenty (20), in township ten (10) north, of range four (4) east, containing forty (40) acres.

Dated at Lansing, this twenty-first day of February, 1871.

HENRY P. BALDWIN.

SAM'L. H. ROW,

Deputy Secretary of State.

Recorded Book 37, page 175.

Indorsed on the back, as follows:

"Register's Office, Saginaw county, ss. Received for record May 18, A. D. 1871, at 9 o'clock A. M., and recorded in Deeds 66, page 618.

"J. K. STEVENS,

"*Register.*"

Q. Did Mr. Barnard inform you what interest Mr. Hewitt had in that land, if any?

A. I think not.

Q. Did he inform you on whose scrip it was reserved, if it was reserved at all?

A. I don't think there was anything said about that.

Hosted by Google

Q. What was the horse worth that you gave Mr. Barnard for the land?

A. I don't know what it was worth.

Q. What did you call it worth?

A. I called it worth one thousand dollars. I believe he talked about $250 or $300. I don't know any thing about it.

Q. The patent was dated the 21st;—how long was it before that that you made the trade?

A. Just about that time. I don't remember exactly whether it was dated the day we made the trade.

Q. Do you know anything about the S. ½. of the N. E. ¼ of the N. W. ¼ of the N. E. ¼ of section 13, 12 N., 10 E., I think it is?

A. I think I owned it.

Q. From whom did you buy that 120 acres?

A. Mr. Barnard; I think.

Q. When was it you bought that of Mr. Barnard?

A. About that time.

Q. What did you pay for that?

A. I do not know. I got it in one deed.

Q. Was it in the same trade?

A. Yes, sir.

Q. Was any of this land, land that had been licensed?

A. I think not. Well, I think this piece in Saginaw county had.

Q. Were there improvements on it?

A. There were ten acres cleared. There were no fences on it. It was not fenced in,—or it was not this spring.

Q. In what county is the other land?

A. Montcalm, I think,—12-10.

Q. Have you the patent for the land in Montcalm county?

A. I think I have, at home.

Q. Will you state whether it was conveyed to you by Mr. Barnard, or by the State? Or was it in the same form of this other patent?

A. I think it is from the State.

Hosted by Google

Q. What did you pay the State of Michigan for this 120 acres of land, if you paid the State anything?

A. I made the deal with Mr. Barnard, I said.

Q. You paid Mr. Barnard?

A. Yes, sir.

Q. The land in Montcalm county is 10 W. instead of 10 E., is it not?

A. I do not remember—it is 10-12, I think.

Q. It is in Montcalm county?

A. Yes, sir.

Q. Has there been any question in regard to your title, since you got your patent from the State, to the land in Saginaw county?

A. Yes, sir; I understand there has.

Q. Who is it questions your title?

A. I went down to see the land this spring, and there is a Dutchman says he owns it.

Q. Do you know whether he is the man to whom the State licensed the land?

A. He said he was.

Q. How long ago, did you understand that he had licensed that land?

Mr. Shipman—We have allowed them to go reasonably far. We object.

The Presiding Officer—That is not within the rule.

Q. Have you had any talk with Mr. Barnard since you traded with him with regard to this being licensed land?

A. I think Mr. Barnard said it had been overlooked.

Q. How long ago did he say it was licensed?

A. I do not think he said. He might, and might not.

Q. Did he say whether it was or was not licensed land?

A. I do not remember about that.

Q. What did he say about it?

A. He said he owed me forty acres of land.

Q. What did you understand him to mean, when he said he owed you forty acres of land?

Hosted by Google

A. He said that land was overlooked; it had been taken up, and had not been entered on the books, I think he said.

Q. Have you and Mr. Barnard arranged the matter between you?

A. No. sir.

CROSS-EXAMINATION OF JAMES T. MUNROE.

Cross-examined by Mr. Shipman:

Question—Did you understand that the Dutchman that you spoke of, had a a patent for that land?

Answer—I do not think he said he had a patent; I think he said he had taken it up from the State as a homestead claim.

Q. Did you not understand from some conversation that a patent had been issued for that land, and that it was marked up on the books?

A. I understood it was not marked up on the books; it had been overlooked, or something to that effect.

Q. It was a mistake?

A. Yes, sir.

Q. Did you understand that this land that you got of Mr. Barnard belonged to him, or to some one else?

A. I think that belonged to Mr. Hewitt.

Q. You went down to Mr. Hewitt's for some purpose?

A. He stopped there as we drove down; we drove down to the livery stable, and he stopped at the bank a moment and then came on.

Q. Did you understand whether Mr. Barnard was getting land from Mr. Hewitt on a contract?

A. I did not understand anything about it.

Q. Did you understand that Mr. Hewitt had it reserved on a contract?

A. Afterwards I asked Mr. Barnard about—

Q. What did he say about it?

A. I think he said that Mr. Hewitt patented it; I won't be sure; it read so. I did not ask him why it was transferred; it

Hosted by Google

was made out in Hewitt's name and transferred to me. I do not remember what he did say.

Q. Did you get all this land at the same time?

A. Yes, sir.

Q. All one transaction.

A. Yes, sir.

Q. He gave all the land for the horse?

A. Yes, sir.

Q. Do you know whether any of the papers were issued to Mr. Hewitt, or in Hewitt's name?

A. They were not.

Q. Did the title come directly to you from the State?

A. I guess one of them came from Hewitt?

Q. In whose name was the patent that was offered in evidence?

A. Cyrus Hewitt's.

Q. You have no other patents here?

A. I have them at home?

Q. In whose name are those,—the same as this?

A. I think they are made out from the State to me.

Q. Do you remember the dates of them?

A. I do not. It is about the same time.

Q. Did you receive them all in one package?

A. Yes, sir.

Q. You do not know what the arrangement was between Barnard and Hewitt; you heard none of that?

A. I do not know anything about it.

Q. About the improvements on this land?

A. Ten acres look as though they had been cleared once; but it was not fenced in the spring.

Q. Was that the piece of land the Dutchman was on?

A. He was on the other forty. He was not on that. He pretended to come on it, and moved on to another forty adjoining.

Q. That patent says that the land was entered by Cyrus Hewitt, and that you are the assignee of Hewitt?

Hosted by Google

A. It was transferred to me.

Q. Will it be any trouble for you to send the patents here?

A. No, sir.

Q. Will you send them to the Secretary of the Senate?

A. Yes, sir.

Q. You think the horse was worth $1,000?

A. I would not take any less.

Q. I would like to ask if that horse was sound?

Mr. Manager Huston—Is not that going a little too far?

RE-EXAMINATION OF JAMES T. MUNROE.

Re-examined by Mr. Manager Huston:

Question—What papers, if any, did Hewitt deliver to you?

Answer—Not any.

Q. Whether you have purchased any lands of any one else in the office except Barnard?

A. No, sir.

Q. Purchased any other lands except those you have stated, of Barnard?

A. Yes sir.

Q. When was it?

A. About that time.

Q. Where were they?

A. I think 80 acres in Duplain, Clinton county.

Q. A part of the same transaction?

A. Yes.

Q. What kind of lands were those?

A. Swamp lands.

Q. State swamp lands?

A. Yes sir.

Q. Was that licensed land?

A. No, sir; I think not.

Q. Have you got that patent with you?

A. I have those together, I think.

Q. You will send that in when you send the other to the Secretary?

A. Yes, sir.

Hosted by Google

Q. Have you purchased any other land at any other time from Mr. Barnard?

A. I bought some land that I had a warranty deed for; not from the State though.

Q. When did you buy that?

A. About that time.

Q. What kind of land was that?

A. Well, I had a warranty deed of Mr. Barnard for that. I called it swamp land,—I don't know.

Q. Where is that land?

A. It is in Sunfield, Eaton county, I think.

Q. Give us the description?

A. I don't think I could.

Q. Do you know whether it was of that class of lands that were originally State swamp lands?

A. I don't know whether it was or not. I think perhaps it was, though.

Q. Did Mr. Barnard tell you from whom he had the land?

A. I don't know that he did.

Q. What did he say about it?

A. I sent for an abstract of title, and I did not get a chain of title, and Mr. Barnard did,—or I understood so; I was satisfied, at least.

Q. Have you got that abstract with you?

A. I don't know whether I have or not. [Looks for it.] I have not got it here. I have it at home. I think it is with the rest of my papers.

Q. You will send the abstract when you send the deeds, will you?

A. Yes, sir.

Q. Have you purchased any other lands of Mr. Barnard?

A. I think that is all.

Q. Is that all at that time, or have you purchased any before or since that time?

A. No, sir.

Hosted by Google

Mr. Manager Huston—That is all.

Mr. McGowan—We have no questions.

TESTIMONY OF RICHARD S. THOMAS.

Richard S. Thomas, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Grosvenor:

Question—Mr. Thomas, where do you reside?

Answer—In Portland.

Q. In this State?

A. Yes, sir, in Ionia county.

Q. What is your business?

A. Dealing in pine lands and farming lands.

Q. How long have you been so engaged?

A. About twenty-one years.

Q. Continuously?

A. Well, off and on, sir.

Q. Have you entered lands at the State Land Office during that time,—this State Land Office?

A. No, sir, not for myself.

Q. Have you entered any land in this State Land Office for yourself, during that time?

A. No, sir.

Q. Have you looked any lands for others?

A. I have entered lands in the State for myself and others with me,—not for myself individually.

Q. For yourself and others?

A. Yes, sir.

Q. State whether you have been in the habit of having lands marked to you—reserved to you—in this office?

A. No, sir.

Q. Or for you and another?

A. No, sir.

Q. Or for your use and your benefit in the name of another?

A. No sir. I have had lands—my business has been done

Hosted by Google

through Mr. Hewitt, the banker, here. When I am away in the "bush," I notify him to hold such lands for me; and how he does it I don't know; but I can generally get the lands that I apply for.

Q. Did you have lands reserved for you on the 9th of March last?

A. I applied to Mr. Hewitt to hold me certain lands last March,—on the 9th of March.

Q. Do you know whether those lands were reserved for you on the books of the office?

A. I do not.

Q. Did you never look?

A. No, sir, I never did.

Q. Were you never informed by the clerks in the office that they were reserved to you?

A. No, sir; I spoke to Mr. Hewitt about it, and he told me that he had done it,—that he had reserved it for me.

Q. Did you not have any talk with Mr. Barnard or Mr. Robinson about their being reserved for you?

A. No, sir; not as I know of.

Q. Call your recollection up.

A. No, sir; I don't mind of ever having any conversation with them that they were reserved for him, as I know of.

Q. About their being reserved to you?

A. No. All the conversation we and Mr. Barnard had about it was that Mr. Turner was mad at me because I had sold them.

Q. No, sir. After Mr. Hewitt said he would reserve them did not you apply to Mr. Barnard to know whether they were reserved for you?

A. No, sir.

Q. Did not he inform you that it was all right?

A. No, sir.

Q. What lands did you ask to have reserved on the 9th of March.

A. In 22-10.

Hosted by Google

Q. What is the description?

A. I could not tell you, sir; I have not got my book with me.

Q. Were they not in sections 10 and 11 in that town.

A. 22–10, W., north. Clam Lake is in the township.

Q. Was there not ten or eleven forties reserved for you at that time?

A. That I have given the description to Mr. Hewitt.

Q. Ten or eleven forties?

A. Yes, sir.

Q. Now, what township was that in?

A. In 22–10 W.

Q. They were reserved there in the name of Mr. Hewitt?

A. Yes, sir; I should think so; that is the way I find all of them.

Q. Did you apply to purchase those lands afterwards?

A. No, sir.

Q. Did you ask Mr. Hewitt to apply for them?

A. No, sir; I did not.

Q. Who got those lands?

A. I was informed a man by the name of Dodge got them

Q. Did you have any talk in the office about that?

A. No, sir; only with Mr. Barnard. Mr. Barnard spoke to me and said that Dodge had applied for that land; that Jim Turner accused me of taking it—

Q. Was not that upon the occasion of your applying for this land?

A. No, sir. I asked Mr. Barnard the question after he told me, says he, "Have you sold any land in town 22, 10?" Says I, "No, sir." "Well," says he, "Jim Turner accuses you of taking it and selling it out to Dodge, here in town." That was all that ever was said. I went and saw Mr. Turner and had a talk about it.

Q. Did not you come to this city on purpose to enter this land about the 9th or 10th of April?

A. No, sir; I did not.

Hosted by Google

Q. Did you have any talk with Mr. Clark about these lands in the office at that time?

A. Yes, sir. Mr. Turner told me, when I went to see him, that he thought it was Mr. Clark who was the one that had sold the lands, and I accused him of it, as Turner was living here, and he denied it. That is all I know about it.

Q. Did not you talk with him in the office about it?

A. No, sir; it was outside on the street.

Q. Or out of the office?

A. It was outside on the street. I met him on the street.

Q. Didn't you have some severe talk with him?

A. No. I just talked to him; just as I state now. I accused him of stealing the lands, and he said he did not have anything to do with it.

Q. That you call a mild conversation? Did you get those lands?

A. No, sir.

Q. Did you apply for them?

A. No, sir, I have not.

Q. Did you have Mr. Hewitt, for you?

A. No, sir, not after that. Not after I ascertained they were gone.

Q. How did you ascertain they were gone?

A. In the way I mentioned at first.

Q. Well, just state it; so that we may know how you ascertained these lands were gone.

A. Mr. Barnard accused me of stealing them. Mr. Turner had accused me of selling the minutes to Dodge.

Q. Just state it fully, so that we can understand it.

A. Well, that is all the conversation that happened; then I went and saw Mr. Turner.

Q. Mr. Barnard accused you of selling these lands?

A. The minutes; that Turner had said so.

Q. What did Mr. Turner know about the minutes?

A. Well, Mr. Barnard told him.

Hosted by Google

Q. How did Mr. Barnard know anything about the minutes?

A. I don't know any more than that sir.

Q. You and he never had had any talk about the minutes, had you?

A. No sir.

Q. There was no arrangement between you and Barnard?

A. No.

Q. To furnish him minutes?

A. No sir.

Q. You never talked with Barnard about this?

A. No, sir, only at that time when he mentioned it.

Q. Never before?

A. No sir.

Q. How often had Mr. Hewitt reserved lands for you?

A. Well, he has done it, off and on, for four or five years.

Q. Has he any during the year 1871?

A. Yes, sir.

Q. To what amount?

A. I could not tell you exactly.

Q. Well, as near as you can estimate it?

A. Four or five thousand acres.

Q. Who were interested in those lands besides yourself?

A. Mr. John Charlton, J. Blake Walters, John Padden, Brown, Monroe, and Monroe Smith, Clear Creek county, Pennsylvania, and E. W. Thompson.

Q. How did you come to apply to him to reserve your lands?

A. To who?

Q. To Mr. Hewitt.

A. Because he was a banker here, and I most generally deposited what money I would have sent me from those parties, to enter land with him, and I take an interest with them.

Q. Were you to pay anything for these accommodations?

A. Yes, sir.

Q. How much have you paid him during 1871?

A. I could not tell you exactly.

Mr. Shipman—We object.

Hosted by Google

The Presiding Officer—I do not see that the evidence is material.

Mr. Shipman—If you will not go any further, we will withdraw the objection.

Mr. Manager Grosvenor—We propose to follow this right up, and to show the arrangement between this man Hewitt and this witness, and we propose afterwards to connect Mr. Hewitt directly with this office, and we propose to show further that while this man did his business directly with Mr. Hewitt, that Mr. Hewitt was the man through whom the business was done in the office.

The Presiding Officer—The hour of 12 A. M. having arrived, the Senate, sitting as a Court of Impeachment, will take a recess until two o'clock P. M.

Lansing, Wednesday, P. M., May 8, 1872.

The Senate met and was called to order by the President, *pro tem.*

The Sergeant-at-Arms made the usual proclamation.

Roll called: a quorum present.

TESTIMONY OF RICHARD S. THOMAS, CONTINUED.

Examination of Richard S. Thomas resumed by Mr. Manager Grosvenor:

Question—Before you were subpœnæd in this case, do you recollect having a conversation with me in the room adjoining the State Library?

Answer—Yes, sir.

Q. About this matter?

A. Yes, sir.

Q. Had you before that had a conversation with Mr. Baker upon the same subject?

A. No, sir.

Hosted by Google

Q. Had you made any statement to him?

A. I do not know whether I had or not.

Q. Do you remember whether, after talking with you, I did not make a memorandum of what you had said at the time?

A. I do not remember whether you made a memorandum or not.

Mr. Shipman—The question is answered. This is a matter that transpired within a very few days,—a matter between the Manager and witness, and we do not know how it affects the case; and we therefore object to it as immaterial.

Mr. Manager Grosvenor—I will state, that the Managers are taken by surprise by the answers of this witness: The object of this inquiry is to lead him to the conversation, and I propose to read a memorandum I made at the time, and read to him after I had made it,—to refresh his recollection.

Mr. Shipman—We object to the question. This is a matter which ought not, it seems to us, be settled here. If he wishes to refresh the witness's recollection, he can do so in a private room. It is not a matter for the Court to determine. The evidence here should be such as will bear upon the issue, as we understand it. We consider this immaterial and therefore object.

Mr. Manager Grosvenor—I do not understand how the gentleman can anticipate that this testimony will not bear upon the issue, if the witness states what the Managers believed he would state when they subpœnaed him. It is only upon the ground that it is a surprise upon the Managers. Before he was subpœnaed, the statement was made and read over to him; then he was subpœnaed and he has been on hand here since. Either the Managers were mistaken, or he; and I wish to see if this will refresh his memory.

Q. Did I not read the memorandum to you immediately afterwards, before I dismissed you?

A. You did not; you read nothing.

Hosted by Google

Q. Let me read this, to refresh your memory.

Mr. Shipman—We object. We are not trying, it seems to me, a matter between Mr. Thomas and the Manager, or any misunderstanding or understanding that they may have had. So far as the witness is concerned, he says he did not hear anything read, and knows nothing about it. What he knows about the fact in the case, it seems to me he can testify to as well now as at any time, and the examination should be confined to that.

Mr. Manager Grosvenor—I believe I am not traveling out of the usual course, when a witness comes upon the stand, and it is claimed by counsel that they have been misled by his statement outside, to read a memorandum or to refresh his memory by stating to him what he said at the time, for the purpose of refreshing his recollection, and then asking the questions. I believe that is the usual course in all courts of trial where a witness's memory is at fault. He may say that I did say that, and it was not true.

The Presiding Officer—On this question I will take a vote of the Senate.

Senator Wheeler—I would like to inquire if the Managers ask the question as an impeaching question, and if so, if they understand that they cannot impeach their own witness.

Mr. Manager Grosvenor—It is not for the purpose of impeachment. It is for the purpose of refreshing the memory of the witness.

Senator Romeyn—I would like to hear the last answer of the witness read by the reporter, If I understood rightly, the witness has said distinctly, that he did not hear any such memorandum, nor know of any such memorandum.

The Presiding Officer—That is the fact. The witness stated so.

The yeas and nays being taken upon the proposition of Mr. Manager Grosvenor, to read to the witness a memorandum of statements of witness to said Manager, the objection to the reading thereof was overruled, by yeas and nays, as follows:

Hosted by Google

YEAS.

Mr. Alexander,	Mr. Gay,	Mr. Stockbridge,	
Ball,	Jenks,	Stoddard,	
Barber,	Mann,	Storrs,	
Begole,	Moffatt,	Waterbury,	
Cawley,	Putnam,	Wilcox,	
Dexter,	Sheley,	Wood,	18

NAYS.

Mr. Briggs,	Mr. Prutzman,	Mr. President *pro tem.*,	
Hannahs,	Romeyn,		
Price,	Wheeler,		8

Mr. Manager Grosvenor then read the following memoranda to the witness:

"*Richard S. Thomas.* Lives at Portland, Ionia county. Looks land and sells minutes, etc. On the 9th March he had marked in Land Office ten or eleven forty's in name of Hewitt and on his scrip; on the 9th or 10th of April the same; they let Cyrus Dodge have them.

"Clark, a clerk in the office, must have told of it, so that Dodge got the lands. He was then near, and I talked to Clark severely for it.

"This has been my practice and I have always got them before. Have had the lands reserved on Deacon Hewitt's scrip, and then bought scrip of him and entered it, and paid him for holding the land—should have paid him $200—for his trouble had I got the lands. Have had lands held for me before, often,—say a month or six weeks, until I could get the money or sell the lands to enter thereon."

Q. Does that refresh your recollection?

A. Do you claim you read me that memorandum?

Q. That I wrote that and read it to you. Does this refresh your recollection?

A. No, sir—not at all.

Q. What do you say now,—that you made that statement to me, or not?

A. I made a part of that statement to you,—just as I told

Hosted by Google

you before dinner about Mr. Clapp,—but I did not know that you had written them down.

Q. Were you not subpœnaed after this?

A. Yes, sir, and told you then it was of no use to subpœna me, because I knew nothing about the case.

Q. Did you ever examine section 16, town 32 N., 2. W?

A. Yes, sir.

Q. When?

A. Last June.

Q. The whole section?

A. I examined a portion of the section.

Q. What part of it?

A. The S. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, and the W. $\frac{1}{2}$ of the S. W. $\frac{1}{4}$, and the S. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$, and the S. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$.

Q. When did you say that was?

A. Last June.

Q. What is the character of the land, as to timber?

A. Well, there is different kinds. There is a part of it is very good farming land; and a part of it is valuable for timber and nothing but timber.

Q. Which part of it is valuable for timber?

A. The S. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$.

Q. What is the other?

A. The other is farming land. Some good beech and maple, and some scattering pine and hemlock.

Q. Did you ever file an affidavit in regard to these lands?

A. Yes, sir.

Q. When did you do it?

A. I done that when I entered them up here last week.

Q. The first day of May.

A. Yes, sir.

Q. You entered the lands the first of May, 1872?

A. Yes, sir.

Q. Did you make any application to the office for those lands before that time?

A. No, sir. I notified Mr. Hewitt to hold them.

Hosted by Google

Q. Well, did you apply for them to the office?

A. I never applied to the office for them until that time—until that day.

Q. The first day of May?

A. Yes, sir,—applied to Mr. Hewitt, rather, to give them to me.

Q. Do you claim Mr. Hewitt held these lands for you?

A. Yes, sir.

Q. How long did he hold them for you?

A. Well, he had held them,—I notified him in June; about the 15th or 20th of June last.

Q. Mr. Hewitt is acquainted with you?

A. Yes, sir.

Q. He knows your name?

A. Yes, sir.

Q. Knows your given name, does he not?

A. Yes, sir.

Q. How long have you been acquainted with Mr. Hewitt?

A. Some four, five, or six years.

CROSS-EXAMINATION OF RICHARD S. THOMAS.

Cross-examined by Mr. Shipman:

Question—What lands did you speak of, you say you applied for the first of May. Do you mean the whole section or only a part of it?

Answer—No, sir. Only five "forties" that I entered.

Q. Five "forties?"

A. Yes, sir.

Q. On sixteen?

A. Section 16, town 32 north, 2 west.

Q. That was primary school land?

A. Yes, sir.

Q. You say you looked those lands, did you?

A. Yes, sir.

Q. And you say you directed Mr. Hewitt to pay somewhere in the neighborhood of—

Hosted by Google

A. Two hundred dollars for the land.

Q. The time I mean,—somewhere last June?

A. Yes, sir.

Q. How much did you say you directed him to pay on them?

A. To hold them under "quarter payment."

Q. Whether that is the land, or part of the land, that afterward went to Allison?

A. Yes, sir; I let him have that.

Q. Do you recollect of being notified through Mr. Hewitt, or in any other way, of an application for those lands?

A. Yes, sir.

Q. By Mr. Allison, or Bush?

A. Yes, sir, they did; the same day Mr. Allison asked me in the Lansing House about this, if I had any lands in Cheboygan waters,—that he would like to have them. I told him that I had, and took out that town with others. Says he, "It is a mistake." Says he, "You don't own that land." Says I, "I do."" "Why," says he, "I say you don't." Says I, "I say I do, sir." Mr. Bush was right there with him. Says he, "I made a mistake. I mean 32 north, 2 east." And when I came down after dinner, I was informed by Mr. Edmonds that he had seen Mr. Hewitt, and that the lands were held under "quarter payment," and what was I going to do with them? Says I, "I am going to take the land." Says I, "What 'forty' have they applied for, to pay in full?" Says he, "I don't know." I saw Mr. Bush on the sidewalk, and I asked him. Says he, "Thomas, I have put the money in the Office for the southwest of the northwest." Says I, "How did you do that?" Says he, "I applied for it." Says I, "Was that the 'forty' that you applied for?" Says he, "Yes." Says I, "Don't you want any more?" Says he, "No." Says I, "All right, then, you can't have it. I will go and pay for it myself."

Q. What did you do then?

A. I went and told Mr. Hewitt to go and fasten on that 'forty' right off.

Hosted by Google

Q. You say you applied at the Office to find out what description it was?

A. Yes, sir. I could not find out at that time.

Q. What answer did you get?

A. They told me they did not know. Mr. Bush is the man that informed me of the description that he had.

Q. Was it right after you asked in the Office, that you saw Bush? How long after?

A. It was right there, at the time.

Q. Did you afterwards apply for all the land?

A. Yes, sir; right away.

Q. Mr. Thomas, has Mr. Edmonds any interest in that land?

A. No, sir.

Q. One way or another?

A. No, sir.

Q. Do you know anything about his holding it, or holding it for you?

A. No, sir. I never dealt with him in my life, in any way, in any land, nor never asked him to reserve any lands for me.

Q. You did your business, you say, through Mr. Hewitt?

A. Yes, sir; altogether.

Q. Was there anything said to you by Mr. Allison about the Supreme Court in regard to these lands?

A. Yes, sir.

Q. What?

A. He made a threat that he would throw it into court, and I told him to throw it; and afterwards says he, "I did threaten to throw it into court, but it would cost me more than the 'forty' was worth." And says he, "Anyhow, I would like to have had the land, for I have some more on the section; I would like to have it;" Says I, "That is all the land I have,—six forties' in that township,—and if you will take them all, you can have them." So I let him have them for ninety dollars.

Hosted by Google

TESTIMONY OF H. D. BARTHOLOMEW.

H. D. Bartholomew, a witness produced, sworn, and examined on behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Huston:

Question—What is your business?

Answer—I am the present Deputy State Treasurer.

Q. Have you with you the book in which you keep the record of the lands sold at the State Land Office, and the payment?

A. I have not got the payment. I have the record of the sale.

Q. Will you look in the month of December and see if you discover on the book any sale to Hoyt & Draper?

A. December of what year?

Q. 1871?

A. [Witness refers to a book.] On December 21st I see their names.

Q. Will you give me a description of the land?

A. The south fractional half of the southwest quarter of section six, town ten north, range twelve east, and the northeast quarter of the northwest quarter of section seven, the same town, acres 123 24-100ths. Sold at one dollar twenty-five cents per acre.

Q. What was it paid in?

A. One hundred and fifty-four dollars and five cents. It was paid by scrip. The scrip was charged to the account of William A. Barnard & Co.

Q. Will you look and see when it is charged to William A. Barnard & Co.?

A. On the same day the whole amount—one hundred and fifty-four dollars and five cents—was charged to William A. Barnard. The amount is known by the record, of charging to Barnard, by the certificate No. 9985, which is the same certificate which covered the land.

Hosted by Google

Mr. Manager Huston—That is all, I believe.

Mr. Shipman—We have no questions.

TESTIMONY OF M. O. ROBINSON.

M. O. Robinson, a witness produced, sworn, and examined on behalf of the House of Representatives, testified as follows

Examined by Mr. Manager Huston:

Question—What is your business?

Answer—Clerk in the State Land Office.

Q. What is your position there? What are you usually called?

A. Chief clerk, I believe.

Q. (Showing witness a book)—What is that book?

A. That is a bound volume of the letters of '71.

Q. I wish you would look and see if there is a letter in there from Charles Conley.

A. I find it.

Q. Will you read that letter?

The witness read the letter, as follows:

NORTH BRANCH, Lapeer Co., Mich.
December 9, 1871.

Commissioner of the State Land Office, Lansing, Mich.:

DEAR SIR—The time has expired in which I am entitled to a deed on license No. 4719, to settle on swamp land. Description of land is S. fl ½ of S. W. ¼ of section 6, town 10 north, range 12 east, Sanilac county. Will you please inform me what I have to do to entitle me to receive a deed, and oblige.

Direct to me at Clifford P. O., Lapeer county, Mich.

Yours respectfully,

CHARLES CONLEY.

Q. Will you look on the back of it and see when it was indorsed as received?

A. I see the official stamp of the office Dec. 19, 1871.

Q. This official stamp of the office,—will you explain what is the custom of the office in regard to that stamp?

Hosted by Google

A. We stamp each letter on receipt of it.

Q. Are there any other minutes on the back of it.

A. It is regularly filed, besides "Land sold Dec. 14, 1871, Hoyt and Draper."

Q. Whose indorsement is that?

A. I should say it was Captain Barnard's.

Q. Now, will you explain, if that land was sold on the 14th, why the money was not paid in and charged to Mr. Barnard until the 21st of December?

A. I don't know that I can.

Q. Can you explain why that letter was not answered to Conley?

A. I cannot, sir.

Q. I desire to call your attention to Sec. 16, town 32 north, 2 west.

A. [The witness refers to book.]

Q. Will you state whether, upon examination, any land on Sec. 16 was applied for at any time by Mr. Cyrus Hewitt.

A. It was, sir.

Q. When was it applied for?

A. I see the date is not here. I will state from memory, or I will get the record.

Q. It has been erased, has n't it?

A. I should say not. The date—there has been some previous marks that have been erased.

Q. Haven't you got the original application?

A. I have, sir.

Q. Will you let me see it? [Paper produced and handed to the Manager.] Whose writing is that?

A. I should say it was Cyrus Hewitt's.

Q. Is that the application that was filed for this land?

A. I should say it was.

Q. When was it filed?

A. July 6th.

Q. What year?

A. 1871.

Hosted by Google

Q. Whose minutes are these on the back of it?

A. Those are my minutes.

Q. When were they made?

A. May 1st, 1871.

Mr. Manager Huston—I would like to read this application in evidence, being the same referred to by Mr. Thomas.

Read and marked.

[EXHIBIT Z.]

LANSING, July 6, 1871.

Com'r State Land Office:

I hereby apply to purchase the S. W. ½ of N. W. ¼, N. W. ½ of S. W. ¼, and S. ½ of S. W. ½, and S. W. ½ of S. E. ¼, Sec. 16, T. 32 N., R. 2 W.; and deposit herewith my chk. o'pay for same. Please hold until I get full names of parties who wish to purchase.

Truly,

CYRUS HEWITT.

Q. Is there any application in connection with this same land by Mr. Hewitt?

A. There is a designation.

Q. That is Mr. Hewitt's writing, is it, too?

A. Yes. sir.

Mr. Manager Huston—I will read this also:

"*Com.* Please apply the enclosed check on the amount, $160, to pay in full for the S. W. ½ of the N. W. ¼ Sec. 16 T. 32 N. R. 2 W. Make patent to me; also the ¼ payment and affidavit for balance.

"Make affidavit in accordance with the law in such cases.

"CYRUS HEWITT.

"*Lansing, May 1, 1872.*"

Q. Have you got the check referred to?

A. I have not.

Q. What became of that check?

A. I presented it for payment.

Q. When was it first presented?

A. May 1st, 1872.

Hosted by Google

Q. If these lands were bought at that time, in July 6, 1871, why was not the money paid into the Treasury?

A. In accordance with the usage of the office, it was retained there.

Q. Can you state the form of that check?

A. I cannot, from memory.

Q. Could you if I should show you a copy?

A. [Examining the paper presented by Mr. Manager Huston.] Without comparing it, I would say that was very near it.

Q. Could you not say that is an exact copy? Are you not familiar with the way Mr. Hewitt presented his checks?

A. There is a regular blank.

Q. Do you know whether that check is destroyed?

A. I do not know.

Q. Do you know whether it is Mr. Hewitt's practice to return them?

A. I do not know, I am sure.

Q. You are not sure whether that is an exact copy?

A. I could not say without comparing.

Q. What is your best recollection as to its being a true copy?

A. I should say it was something like it, certainly.

Mr. Manager Huston—I would like to read it in evidence.

Mr. Shipman—If you say it is a copy.

Mr. Huston—I know it is, for I copied it myself.

Read as follows:

No—— LANSING, Mich., July 6th, 1871.

Banking House of Hewitt & Co.—Pay to my order Two Hundred Dollars.

$200. CYRUS HEWITT.

Q. Was that check indorsed by Mr. Hewitt, when it was left there the 1st of July?

A. I think not.

Q. When was it first indorsed by Mr. Hewitt?

A. I could not say that it was ever indorsed.

Hosted by Google

Q. Is that the usual practice in the office,—to receive checks from Hewitt,—convey lands in that way, and withhold lands from market?

A. To some extent I think it is.

Q. Mr. Edmonds has knowledge of that practice, does he not?

A. I presume he does.

Q. Of receiving checks, and withholding lands?

A. I would not say positively whether he does or not.

Mr. Shipman—We will admit that he does.

By Mr. Manager Huston:

Q. Do you know Mr. Thomas?

A. I know a gentleman by the name of Thomas.

Q. Do you know his given name?

A. Richard S., I think.

Q. Did Mr. Hewitt apply in person for this land; did he come to the office and make out that application in person?

A. I could not say. I do not remember whether he did or not.

Q. How long have you been acquainted with Mr. Thomas?

A. A year or more.

Q. Mr. Thomas has done considerable business with Mr. Hewitt, has he not, in the office?

A. I presume he has.

Q. He has been in the practice of having Mr. Hewitt reserve lands for him?

A. I presume so; I do not know.

Q. Mr. Hewiit says, in that application, he wants you to hold the land until he gets the names of the parties who want to buy. Did he not know who Mr. Thomas was on the 6th of July?

A. I presume he did.

Q. Do you not know that he was acquainted and had been doing business with Mr. Thomas before the 6th of July last?

A. I am pretty well satisfied that he was.

Hosted by Google

Q. I wish you would take this book, lettered "H," and see if you can find there any application from Edmund Hall that. covers any lands on this list (Exhibit X), below this dash, [Witness refers to the book.] Are not those books arranged by putting all the letters from one man together?

A. It is the practice, sir.

Q. What year is that the letters have?

A. 1871.

Q. Do you include anything besides letters in that book?

A. Applications for purchases generally.

Q. Have you looked through the letters of Edmund Hall's?

A, I have, sir.

Q. Do you find any application to cover any lands in this list?

A. No, sir.

Q. Do you find any application of Edmund Hall's, dated the 24th day of November, 1871?

A. I do not, sir.

Q. Will you take this other book, volume R., and see if you find any application of Henry S. Ripley for any of those lands; and especially for the 24th day of November, 1871?

A. [Referring to the book.] I am satisfied there is none.

Q. Will you state now whether it has been the practice to retain lands, for any other person except Mr. Hewitt, upon the deposit of a check?

A. Yes, sir.

Q. To what extent has it been done for other parties?

A. I could not say from memory,—to a considerable extent, I would say.

Q. Would you, or would you not, say it is the general practice in the office to do that?

A. It is when it is requested and we are satisfied it is *bona fide.*

Q. How long are the lands usually held in that way,—until the party holding them has an opportunity to sell? Is not

Hosted by Google

that the custom, to deposit a check, and the lands be held in the office until the party that deposits the check has an opportunity to sell the lands to some one else?

A. I could not say.

Q. Could you say whether this has been done during the last year?

A. I could not say.

Q. How was it with this land on section 15, 32 N., 2 W. Was not that held until it was sold by Mr. Hewitt to Mr. Thomas?

A. I do not know whether he sold it to Mr. Thomas or not. I could not say as to that. It was held until an application came in for a portion of it.

Q. Who made the application?

A. W. C. Busch, I believe.

Q. Whom did he make the application for,—himself or Mr. Allison?

A. David W. Allison was his name.

Q. Why did you not hold it along after that application was made?

A. I could not say. We were directed by the Commissioner to notify Hewitt that there had been an application for forty of it, and if he wanted any of it to designate to the extent of the deposit what pieces he would take.

Q. Do you not know, as a matter of fact, that on the 1st of May Mr. Hewitt sold that land to Mr. Thomas.

A. I have seen in that that he is—that it is the owner's writing.

Q. Did you not have knowledge of the transaction?

A. It seems as though I filled up a blank for him.

Q. What kind of a blank?

A. An assignment.

Q. An assignment of Mr. Hewitt to whom? To Mr. Thomas?

A. I think it was Mr. Thomas.

Hosted by Google

Q. An assignment of what?

A. Certificates.

Q. Certificates for the purchase of this land?

A. Yes, sir.

Q. When was that certificate of purchase made?

A. May 1st, 1872.

Q. What time was it you made the assignment from Mr. Hewitt to Mr. Thomas?

A. I think it was the same day, in the evening, when I started home.

Q. Do you know what Mr. Thomas paid Mr. Hewitt?

A. I could not say anything about it.

Q. You are not conversant with the deal between Mr. Hewitt and Mr. Thomas?

A. I know nothing about it, sir.

Q. Will you give us the names of some parties that have been in the habit of doing business in the same way in the office, besides Mr. Hewitt?

A. Thomas B. Palmer has been, I think.

Q. Is he holding any in that way now?

A. I could not say from memory.

Q. What is your best recollection with regard to whether he has any or not, withheld from sale?

A. I could tell positively if I had the records—the checks.

Q. This is school land. Will you state whether there is any swamp land withheld in the same way from market for sale?

A. There are reservations on State road contracts.

Q. Is there not any held by checks?

A. I do not remember of any.

Q. Do you know anything with regard to swamp land being withheld for the benefit of parties in the office upon scrip or upon contracts?

A. I do not.

Q. Did you ever have any knowledge of anything of that kind?

Hosted by Google

A. No personal knowledge.

Q. Do you know whether Mr. Hewitt is in the practice of having lands withheld in that way?

A. He is, sir.

Q. When he has no scrip there to pay for the land?

A. He is, sir.

Q. How extensive is his practice of that kind?

A. Not very extensive.

Q. Do you not know that it is the practice of different parties to apply to Mr. Hewitt to have lands marked in Hewitt's name when he really pays nothing for the land, and they are held in that way until the lands are sold?

A. He has an order from the contractor to reserve what lands he wants on that contract.

Q. When it is minuted upon the plat "C. H,"—which means Cyrus Hewitt in your office?

A. Sometimes.

Q. Is it your practice to charge him with the amount at that time and make him pay?

A. We charge it up to his unmatured order,—the contract on which the unmatured order is given.

Q. When he sells that land to A, B, C, or whoever comes and buys it, what is done,—who pays for the land?

A. Just as he designates. If he designates it to be charged to his unmatured account, we do so.

Q. If he does not, how is it paid for?

A. Paid for as he designates.

Q. Does he not designate very frequently that the party who has the land shall pay?

A. I think not.

Q. Is it not the fact, that the party that the State patents the land to, frequently pays for the land?

A. I cannot call to my mind an instance of that now. There may be some, however.

Q. Do you know whether all the lands that have been paid

Hosted by Google

for—the swamp lands that have been paid for—have been patented to the parties that are entitled to lands?

A. I think they are not quite all. I am behind with my work a little now.

Q. How far behind?

A. If I had an uninterrupted day I could probably bring up.

Q. Is not there a large amount of lands received on matured scrip, that have been reserved for a long time in the office,—that have been patented?

A. I think not reserved on the matured scrip.

Q. Where it has been reserved on unmatured, and it has matured, are there not contracts on which it has laid along for months?

A. There may be. I could not say.

Q. Do you not know that it is so?

A. I think it is in several instances.

Q. What contract is it that Hewitt has that is unmatured?

A. He has an order now on the Theodore Bathay contract.

Q. Do you not know that Bathay assigned that contract last July to Obed Smith, of Alpena.

A. I do.

Q. How large is the order that he has upon the Bathay contract?

A. It is an unlimited order if I remember rightly.

Q. Is it not a fact that Bathay has no interest in that contract at all,—that he has sold it entirely to Smith?

A. I think he has an interest now.

Q. How is it, then, that Hewitt reserved land upon unmatured scrip, or a contract that Bathay has no interest in?

A. I have been informed that Smith recognized the order of Bathay.

Q. Do you know whether this is so or not?

A. I am pretty positive.

Hosted by Google

Q. Do you know whether the Bathay contract has been completed or not?

A. No, sir; I think it has not.

Q. You don't know whether that is so or not?

A. Yes, I know it is not, in fact.

Q. When did Bathay give Hewitt this order?

A. I think it was in the early part of 1871, some time. I can't say positive.

Q. Upon whose order did he reserve before that time?

A. He had an order from Smith & Cicero; an order from Elias Steel; an order from Jackson B. Barr. That is all I remember now.

Q. Did you state what the amount of the Bathay order was?

A. It was an unlimited order of such lands as he should designate from time to time.

Q. I suppose you have a book in which you have these orders, and you can also show from your books the amount of land that has been taken on that order?

A. Yes, sir.

Examination continued by Mr. Manager Cochrane:

Q. Do I understand you that other parties besides Mr. Hewitt send checks for the land here, payable to their own order and unindorsed? That was the situation of Mr. Hewitt's check. Do you know that that was so?

A. I can't say.

Q. Did Mr. Palmer ever send such a check?

A. Not that I know of. I don't know that I ever saw his check.

Q. Then why did you say that Mr. Palmer had his name reserved on such checks?

A. I saw his name on the check-book.

Q. They are checks you deposited as cash?

A. Yes; they are received as cash.

Q. Where did you deposit them?

A. They are deposited by the depositor with the Commissioner of the State Land Office.

Hosted by Google

Q. Are they checked in the ordinary form, payable by the parties named, and indorsed, if payable to order, upon which you can go aud receive money, if the money is in the bank?

A. Yes, sir.

Q. Without any further action on the part of the maker?

A. I cannot say positively as to that. I did not notice them particularly.

Q. Do you recollect any other check, or any case where a check of the kind of Mr. Hewitt's, of that precise character, was deposited?

A. I don't remember now. I did not notice that until it was called to my attention.

Q. When these checks come to you, is it a custom of the office to issue certificates immediately?

A. It is not.

Q. When do you issue those certificates?

A. When the checks are paid.

Q. When the checks are paid, or when you go to get the money on the check?

A. A party requests us to hold the lands until he notifies us that. He usually holds them.

The Presiding Officer—The Senator from the Twenty-fifth (Senator Waterbury) sends the following question:

The Secretary will read the question.

The Secretary read the question, as follows:

"Are Mr. Hewitt, and Jones & Porter, in the habit of having lands marked on the plat-book, where they remain during the pleasure of the parties, and then erased whenever the parties request it?"

Witness—It has been the custom; yes, sir.

Q. Then I understand from you, that these parties who send checks in this way, request you to hold them until they shall order the certificate from you, or until you receive the payment. Then they may refuse payment; what becomes of the land in the meantime?

A. We do not have such instances very often.

Hosted by Google

Q. What would be the effect of it? As I understand, you hold this. Don't you consider the land as sold until you get the money?

A. I consider the land sold when the check is deposited. We, however, take no such chances as that, unless we are convinced that they are *bona fide*.

By Mr. Manager Huston:

Q. I wish you would look at section 16, 29 north, 7 west. [The witness here referred to a book.] State whether any of that land has been reserved for the benefit of Mr. Hewitt.

A. It was once.

Q. When was it?

A. July 14th, 1871.

Q. State when that land was patented or sold, if it has been sold?

A. October 12th, 1871.

Q. To whom was it sold?

A. John Charlton.

Q. Do you know John Charlton?

A. I do not.

Q. Do you know who sold him that land; whether Mr. Hewitt sold it to him, or the Commissioner of the State Land Office?

A. I think Mr. Hewitt did; it is my remembrance.

Q. Mr. Hewitt sold it that very day?

A. I cannot say positive whether he sold it; it was sold from him.

Q. How many acres are there that Hewitt sold to Charlton?

A. Five hundred and sixty acres.

Q. Do you know what Hewitt got of Charlton for that land?

A. I cannot say.

Q. Or how much more than the Government price he got?

A. I cannot say that he got any more.

Q. You are a son-in-law of Mr. Hewitt?

A. Yes, sir.

Hosted by Google

Q. Do you not know as a matter of fact that when Hewitt has lands retained in that way he sells them at an advance of the State price?

A. He never told me whether he did or not.

Q. Don't you know that those lands are withheld for the express purpose so that Mr. Hewitt can sell them when he has an opportunity of this kind, and get an advance above the price that has to be paid by the State?

A. I cannot state from personal knowledge.

Q. Is not that the fact?

A. I understand that he holds lands for parties who are selling lands, and when the party for whom he holds the lands sells them then he makes them up.

Q. Do you understand that Mr. Hewitt holds them as an accommodation,—without any recompense?

A. He may get a recompense.

Q. That is what he holds them for, that he may get some compensation?

A. I can't say.

Q. That is your understanding?

A. I do not understand anything about it; I don't know.

Q. I want to call your attention to township 29 north, 4 west, section 16.

A. Yes, sir.

Q. Is there any land upon that section that is reserved by Mr. Hewitt?

A. There was.

Q. When was that reserved?

A. July 14th, 1871.

Q. How long was that held?

A. Until October 12th, 1871.

Q. Who was that sold to?

A. John Charlton.

Q. Do you know how that land was paid for?

A. It was paid for with money.

Hosted by Google

Q. Was it paid for with money, or by check?

A. I cannot say exactly. I do not remember. It seems there was a check deposited, which I presume was paid. I presume to say so.

Q. Do you know what kind of a check that was; whether a check upon a bank in Detroit, or New York, or Mr. Hewitt's bank?

A. He generally gives them on his own bank.

Q. Will you take that letter, in book "H," and see whether you find an application there for lands signed by Edmund Hall, per L. B. Potter, with a direction that it be deeded to James B. Monroe. [The witness here referred to a letter book.] Do you find any such application?

A. I do.

Q. Will you read the description?

A. "The N. E. ¼ of the S. W. ¼, Sec. 5, 8 N., 1 W., and the S. ½ of the N. E. ¼, and the N. W. ¼ of the N. W. ¼, 13, 12, 10 W. The Commissioner of the State Land Office please put the above land in the name above given, and discharge to the above credit given in my books, now in your office. Lansing, February 21st, 1871. Edmund Hall, by L. B. Potter."

Q. Now Mr. Munroe, in testifying to these same lands, stated something about Mr. Hewitt's being interested in these lands. Can you state whether Mr. Hewitt had any interest in it, or whether he understood it was reserved for Mr. Hewitt?

A. I know nothing about it. No, sir.

Q. Do you remember anything about the transaction of Mr Barnard's selling that land,—the last 120 acres that you read the description of to Mr. Munroe?

A. I do not.

Q. Mr Barnard never said anything to you about it?

A. No, sir.

Mr. McGowan—Give the description of the lands, slowly, that was deeded to Munroe.

A. "The N. E. ¼ of the S. W. ¼ of Sec. 5, 8 N., 1 W., and

Hosted by Google

the S. ½ of the N. E. ¼, and the N. W. ¼ of the N. W. ¼, 13, 12, 10 W."

Mr. Manager Grosvenor—Will you examine in Book "C" letters of O. B. Clark, Oct. 2d, 1871.

[Witness here referred to book.]

Q. In whose handwriting is that letter?

A. I cannot say positively. It resembles the handwriting of Clark in the office.

Q. What is your best impression about it, whether it is or is not?

A. I am not much of an expert, but I should say it was his writing.

Q. What Clark?

A. H. C. Clark, I think it is.

Q. A clerk in the Land Office?

A. Yes, sir.

Q. Was he at the date of that?

A. I don't remember when he came, but I should think he was.

Q. In whose handwriting is that addition, then?

A. Commissioner Edmonds.

The Presiding Officer—The Senator from the Third (Mr. Briggs) sends up the following:

The Secretary read the question, which was as follows:

Q. Has it been the practice, since the 1st of January, 1871, to mark land on the books of the Land Office as reserved in the names of C. Hewitt and Jones & Porter, and to lease these reserves when requested?

A. I cannot remember as to dates. I should say it had not, to any great extent,—it may be some of it.

Mr. Manager Grosvenor—I offer this letter in evidence. I would like to have it taken as evidence, as the paper cannot be taken out.

"LANSING, MICHIGAN.

"*The Hon. Commissioner of the State Land Office:*

"I hereby apply to purchase the following description of

Hosted by Google

land: The S. E. ¼ of the S. E. ¼ of Sec. 32, T. 10 N., R. 1 W. State of Michigan. Said description having once been a license, and proofs of abandonment to it.

"Please find also $95. Please furnish scrip.

"Yours respectfully,

"O. B. CLARK.

"*October 2, 1871.*"

Addressed at the bottom:

"*W. A. Barnard*—Please use $100 of our scrip, with which to locate the above described land.

"C. A. EDMONDS."

Q. Can you tell from the records before you whether that land was entered in accordance with this application?

A. I should say it had, from the filing on the back of the letter.

Q. Have you any record of entries with you?

A. No, sir; I have not.

Q. You have no record in court that will enable you to ascertain in whose name that was entered?

A. I should say it was entered in accordance with the request in the communication; no further evidence.

Q. Have you not a practice in the office to change that entry and allow them, at the request of O. B. Clark, to be entered and patented in the name of another?

A. It gives pretty good reasons for doing so.

Q. Before it was patented by request of O. B. Clark, did the assignment of his application allow you to enter it in the name of another.

A. It would be optional with the office.

Q, Have you not been in the habit of doing so?

A. Somewhat, I should say we have.

Q. During Mr. Edmond's administration?

A. I cannot remember. It is very seldom, however. It occurs so seldom that I cannot remember.

Q. Have you any recollection about this particular tract of land?

Hosted by Google

A. I have not; no, sir.

Q. You have no recollection of Clark and Van Dunham?

A. I have not.

Q. Or some lands?

A. I have not.

Mr. Manager Huston—Now let me call your attention to the question that was just put to you by the Senator from the Third, in regard to the reservation of lands for Mr. Hewitt, and asked you if it hadn't been the practice since 1871, to allow Mr. Hewitt to withdraw his application, where lands have been penciled to him, as you unusually pencil them to him on the books, that you have allowed him to withdraw, and it has been rubbed out?

A. I may be.

Q. Your best recollection in regard to it?

A. I don't recollect of an instance now; there may, however, be some instances. I cannot say.

Q. And Jones & Porter?

A. Jones & Porter had a little marked out. I don't know whether they are all marked out yet or not, but they are considered as vacant lands.

Q. Then you rub out at their request?

A. I think not at their request; I don't remember of their having been.

The Presiding Officer—The Senator from the Second (Mr. Sheley) sends up the following question, which the Secretary will read.

The Secretary read the question, as follows:

"Do you know of Mr. Hewitt or any other person withdrawing any of these land checks, and by so doing placing the land back on the books for sale?"

A. I cannot remember of any instance now,—there may be, however.

Q. Has'nt it been the practice in the office to allow a party to deposit his check and mark the lands as applied for by him,

Hosted by Google

and hold that land until he could send a land-looker into the woods and see whether they were worth taking or not?

A. I cannot say.

Q. Have you no knowledge of any such transaction?

A. I have not.

Mr. Manager Huston—Mr. President: We did not intend to enter into a general examination when we called this with ness, but only to examine in regard to those matters upon which the witnesses have already been sworn; also, for the purpose of showing a letter from Mr. Conley. We don't desire to pursue the examination any further at this time. We want to recall him again when we are through on other matters.

Mr. Shipman—The Managers were examining for an application of Mr. Hall, in the letter-book,—not the proper place to look for it. We ascertained this after they had made their examination; as they did not inform us before, we could not make the offer before. Here is the application, dated Nov. 24th, 1871. Mr. Hall has a box in the office, as has every contractor, where things of that kind are kept. The applications in that shape are put in the box. I presume Mr. Ripley's application will be in there, and this is the paper you were looking for and did not find.

Mr. Manager Huston—We will look at it afterwards and see.

CROSS-EXAMINATION OF O. M. ROBINSON.

Cross-examined by Mr. McGowan:

Question. When purchases are made of land, are the certificates made up right away?

Answer. It is owing to circumstances somewhat.

Q. Are there any times when the certificates are not made up at once?

A. There are.

Q. For what reason was that delayed?

A. Frequently uncurrent checks are sent to the office, or drafts which the State Treasurer will not take, and we have to hold the application until the check or draft is paid.

Hosted by Google

Q. What other reasons are there for delaying payment to the Treasury?

A. Sometimes lands are withheld on checks.

Q. When swamp lands are purchased on matured scrip, is the return made to the Treasurer at once?

A. Yes, sir.

Q. Is the certificate always made out at once? Are you ever behind with your work, so it is not "made up," as you call it?

A. Sometimes, in the rush of business.

Q. In that case is the payment made over to the Treasurer before the certificate is made up?

A. It is not.

Q. Is not the payment made to the Treasurer always when the certificate is made up?

A. It is.

Q. Are checks or drafts sent for the purchase of scrip, that are uncurrent and have to be collected away from the office?

A. Yes sir.

Q. Would that delay the payment to the Treasurer?

A. It would.

Q. Would you make up a certificate for those lands before you had received returns for that check or draft?

A. Sometimes we do and sometimes we don't.

Q. Would you usually?

A. Usually not.

Q. But a payment would not be made to the Treasurer until a return was made from the draft?

A. No, sir.

Q. Have you any personal recollection about this Conley land that was purchased by Hoyt & Draper?

A. I have not.

Q. Do you recollect whether Hoyt & Draper paid for their scrip with a check or draft, or not?

A. I do not know anything about it.

Hosted by Google

Q. Do you know why the payment was delayed at the Treasury?

A. I do not.

Q. From the Land Office?

A. I do not.

Q. When was the assignment made of the Bathay contract to Smith?

A. Some time in 1871; I don't think I can give the month.

Q. What was the time with reference to the time given to Hewitt,—that general order you spoke of,—or was the assignment made before or after Hewitt got his order?

A. After.

Q. Then Hewitt had got his assignment when the order was made?

A. Yes, sir.

Q. And still reserves on that order?

A. Yes, sir, so understood.

Q. On these reserves made by Hewitt on that order on the Bathay contract, that Smith recognized, in all those reservations as made?

A. He did.

Q. What is the fact in regard to these applications—these written applications—being put in letter books?

A. Applications that direct the purchase of land are filed with the letters; applications to reserve on contract are placed in the box containing a record of that contract on which the land is reserved.

Q. Should this application of E. B. Hall's be put in the letter-book, or in Hall's box?

A. I will tell you by looking at the application. [Witness here looked at application.] It should go in his box.

Q. Do you recognize that as an application by Hall for any part of this land spoken of by Smith,—a part of the lands on the list of Smith?

A. I cannot say anything about that, whether they are on Smith's list or not.

Hosted by Google

Q. Will you look upon that paper, and see whether it covers any descriptions below the dashes that the Honorable Manager has called your attention to? [Showing witness paper.]

A. It does, sir.

Mr. McGowan—We ask that the application be marked, and filed with the Secretary.

The following is a copy:

EXHIBIT AA.

SUBDIVISION.	Section.	Town.	Range.	Area. Acres.	100ths.	
w ½ of s w ¼	5	36 n	1 e	80		
s ½ of s e ¼	6	36	"	80		
s ½ of n e ¼	9	"	"	80		
e ½ of s e ¼	9	"	"	80		
s ½ of s e ¼	18	37 n	1 e	80		
s w ¼ of n e ¼	18	"	"	40		
n ½ of n e ¼	21	"	"	80		
s ½ of n e ¼	21	"	"	80		
e ½ of n w ¼	21	"	"	80		
s w ¼ of n w ¼	22	"	"	40		
w ½ of s e ¼	29	37 n	1 w	80		
n e fl ¼	24	36 n	2 w	63	66	X
n ½ of s w ¼	24	"	"	80		X
n w ¼ of s e ¼	24	"	"	40		X
lots No 1 and 2	24	"	"	97	19	X
n w ¼ of n w ¼	5	37 n	2 w	40		
n e ¼ of s e ¼	6	"	"	40		
s ½ of s e ¼	6	"	"	80		
n e ¼ of n e ¼	7	"	"	40		
s w ¼ of n e ¼	8	"	"	40		
n w ¼ of s e ¼	8	"	"	40		

Commissioner State Land Office:

Please reserve the above list of Lands for me on Contract No. 28, Ionia, Houghton Lake and Mackinac State Road.

E. HALL,
By L. B. POTTER.

LANSING, November 24. 1871.

Endorsed on the back:

"E. Hall, application. Received at Lansing November 24, 1871. Michigan State Land Office."

Q. Have you any knowledge of Mr. Ripley applying for a portion of this land on that list of Smith's?

A. I have not.

Hosted by Google

Q. Has Ripley made any contracts?

A. He has.

Q. Has he a box?

A. Yes, sir.

Q. Has Mr. Ripley got my contracts?

A. He has.

Q. Has he a box?

A. He has.

Q. If he applied for lands on his contracts on unmatured scrip, where should the application be found, according to practice?

A. In his box.

Q. I think you have stated in answer to the Manager's question that when contracts have matured the lands in some instances have lain along and have not been patented up?

A. I think there are such instances, a short time.

Q. How long?

A. I could not give any definite time,—it varies.

Q. Do you know why these lands have remained along and not been patented when the scrip matured, or the contract had entirely matured?

A. Well, sometimes it is the case with contracts that the contractors are a firm, the individual names of which we do not know, and we cannot issue a patent in the name of a firm, and so we have to hold on until we can get the individual names. Sometimes we have been unable to get them right away. Sometimes it has run a long time.

Q. Is it a fact, Mr. Robinson, that there is sometimes confusion in the accounts?

A. Yes, sir.

Q. It is necessary to see the contractors?

A. Yes, sir.

Q. Do the contractors come to the office promptly when their contracts have matured; always?

A. No, sir; not always.

Hosted by Google

Q, To settle up their aecouuts and get their patents ?

A. No, sir.

Q. Do you know whether the present Commissioner has taken any measures to have these old contracts all patented up, —all examined and patented up ?

A. I do.

Q. What has been that action ?

A. Some time in March—the fore part of March, I think, he directed one of the clerks to notify every contractor that unless he sent in the names that he wished the patents issued to, we should issue them to the contractor; commencing on the 20th of March, I think it was.

Q. Which one of the clerks took the matter in hand ?

A. Mr. Gillam, I think.

Q Now, with regard to these checks or drafts that were left here. Is it a practice of the office to receive checks or drafts and retain them on application for swamp lands ?

A. I think it has never been the practice.

Q. What class of lands are checks or drafts received on ?

A. School lands, generally,—primary school lands.

Q. For what proportion of the payment ?

A. Sometimes full payment and sometimes quarter payment.

Q. Any time half payment,—fifty per cent. ?

A. I don't remember of an instance; no, sir.

Q. You say you have no recollection of Hewitt having any lands marked to him when he had no credits since 1871 ?

A. No, sir, I have not.

Q. You spoke of some marked to Jones & Porter; what was there about those marks,—were they put on since 1871, that you know of ?

A. No, sir, I think not.

Q. Were they removed since 1871 ?

A. They have been considered as vacant since 1871.

Q. Has there been any directions to remove them ?

A. Well, Mr. E. H. Porter directed me, I think, to rub them out,—to rub out the marks on those vacant lands.

Hosted by Google

Q. When did he tell you to do that?

A. About the time that he went out of the office,—I could not say whether it was a day or two before or a day or two after.

Q. About what quantity of land was marked, that he wanted you to rub out the marks from?

A. Well, I could not say very near; quite a number of pieces, however.

Q. I wish you would state a little more fully with regard to an applicant changing his order and having his lands patented to some one else, or the certificate issued to some one else?

A. It is a case that so seldom occurs—

Q. Have you any recollection of its ever occurring?

A. I could not cite an instance, but my impression is that since my stay in the office there have been such instances.

Q. Where a man had made an application for a piece of land and paid for it?

A. He had simply to come in and change his application.

Q. And have the certificate issued to some one else?

A. Yes, sir; I think there have been such cases. I would not say positive that there has or has not.

Q. That was all that you meant by it, then?

A. Yes, sir.

Q. After making application and before the certificate was issued to him, he might come in and order the certificate issued to some one else?

A. Yes, sir.

Q. Or change the application?

A. Change the application. It would require him to change the application.

Q. You would always require the application changed?

A. Yes, sir.

Q. And put in the name of some one else?

A. Yes, sir.

Q. Would that be in case some one else had purchased the interest of the applicant?

Hosted by Google

A. I could not say under what circumstances it would be done.

Q. You don't recollect any case ?

A. No, sir.

The Presiding Officer—The Senator from the First sends up the following question, which the Secretary will read.

The Secretary read the question, as follows:

"You have stated that certain parcels of land were marked from time to time with the initials Cyrus Hewitt and Jones & Porter. Who made those marks on the books."

A. Sometimes the Deputy made them and sometimes I marked them,—just as it happened.

Q. If you made them, at whose instance or instruction did you make them ?

A. The Deputy's, generally.

Q. When were those marks made ? When were those marks on the books in favor of Hewitt and Jones & Porter made, the marks that are now referred to as having been made when they had no credits?

A. I don't know of any such.

Q. You don't know of any such ?

A. No, sir.

Q. The understanding has been, Mr. Robinson, that you have testified that Hewitt had lands marked up to him on the books when he had no credits at the office. Is that a fact ?

A. I do not wish to be so understood. No, sir.

Q. It has also been understood that Jones & Porter had lands marked up to them when they had no credits,—do you wish that to be understood?

A. I could not say positively about that. I think, however, that there was some land marked up to them when they had no credits.

Q. You say now that you do not wish to be understood that there were any lands marked to Hewitt when he had no credits?

A. I do not,—no sir.

Hosted by Google

Q. What lands were you speaking of, then, that were marked up to him?

A. Swamp lands and school lands.

Q. Were they charged to him on his credits?

A. Yes, sir.

Q. Were those marks ever removed from the books for the benefit of Hewitt?

A. Not that I know of.

Q. He either sold the lands or had them patented up when the scrip matured?

A. Yes, sir, as near as I can remember.

Q. Then all you know about lands being marked to Jones & Porter, where they had no credit, is simply these marks that Mr. E. H. Porter told you to remove when he went away?

A. That is all I know about it, sir.

Q. And you know nothing of the kind against Hewitt?

A. I do not,—no, sir.

Q. You were asked with regard to Mr. Hewitt's application for some land on a school section, where he deposited one quarter payment. Will you state why his application was not held continued upon quarter payments on the check, after Busch made his application?

A. The custom of the office, where there is a conflict in that way, is to have it settled up immediately by one way or the other.

Q. Do you know whether there is any law or Supreme Court decision that requires that it should be?

Q. I think there has been a decision of the Supreme Court with regard to it.

.Q That where lands are held on a quarter payment, and some other party applies for a portion of them, then the party who is holding them on this quarter payment must elect what he will take?

A. Yes, sir.

Q. Is that it?

A. That is it.

Hosted by Google

Q. I think you stated that these checks or drafts were retained in the Land Office until the final disposition of the case, either by full payment or otherwise?

A. Yes, sir.

Q, You stated also that the money was never paid into the Treasury, by the practice of the office, until the certificate was issued?

A. Yes, sir.

Q. Where there is one quarter payment do you issue any certificate?

A. We do?

Q. Is it required when a quarter payment is made that a certificate issue on the payment of one quarter the amount?

A. I think it is?

Mr. Manager Huston—That is the statute.

Q. In these cases where a quarter of the amount is paid and a check or draft is held, do you issue certificates?

A. I do not know that I quite understand your question.

Q. In the case of Hewitt, where he applied for the five forties and left his check on his hands for one-fourth of the payment, was there a certificate issued to Hewitt?

A. There was.

Q. And the check you held in the Land Office?

A. Until it was presented for payment.

Q. When was the certificate issued on that?

A. May 1, 1872.

Q. When was the payment made on the check?

A. May 1, 1872.

Q. Have you ever issued a certificate until the money is paid?

A. No, sir.

Q. Then, what becomes of the money?

A. It goes to the Treasury.

Hosted by Google

RE-EXAMINATION OF O. M. ROBINSON.

Re-examination by Mr. Huston :

Question. If I understand you, you said you knew of no cases where the certificate had been issued to a different party from the one that applied. Will you look at 29 N., 4 W., 29 N. 7 W., and see, whether in that case when Hewitt applied, that the certificates were not issued to John Charlton?

Answer. Yes, sir.

Q. The lands were applied for by Hewitt?

A. They were held on his checks, it seems by the marks.

Q. You do not hold them unless he has paid for them?

A. No, sir. He may have applied, however, to hold until he should designate the names of parties to enter them.

Q. That was school land?

A. Yes, sir.

OBED SMITH, RE-CALLED.

Examined by Mr. Manager Huston:

Question. Who has any interest in the Bathay contract that was assigned to you, besides yourself, if anybody?

Answer. Not any person.

Q. Do you know anything of a general order drawn by Mr. Bathay to Mr. Hewitt?

A. There was such an order when I took the contract. I was informed there was. I did not see it.

Q. Did you have any conversation with Hewitt with regard to the order?

A. Yes, we had conversation. There is a writing filed in the office, which I then enclosed with it, but I am not certain about that lands that were reserved on the contract were to lie, to be paid for by Bathay, or others. They were to lie against the contract. The understanding was, that if the lands were not paid for, the lands were to belong to me. That was the general understanding: If the lands were not paid for, and patents taken, the lands were to belong to me, except those

Hosted by Google

that he would have a right to throw back, under the law passed last year.

Q. What do you mean by that?

A. There were certain local lands taken, and an act was passed by the Legislature, allowing him to take other lands in the room, and throw them back to the State,—they being local lands when the contract was made.

Q. Suppose Mr. Hewitt reserves 80 acres of land upon the general order of Bathay, and the land is afterwards sold and patented by the State—who pays the State for the land?

A. The person to whom it is patented.

Q. Was it the understanding between yourself and Mr. Hewitt, that it was to come out of you or out of the Bathay contract?

A. No, sir, there was no such understanding. He has to pay for it, if it is paid by any scrip belonging to him. He pays me for the scrip. I sold him $125 worth the other day stipulating that he is to take up the lands that are reserved on this contract.

Q. What was the object, then, of his holding this Bathay order—this general order from Bathay—if he had no interest in it,—what was the object.

A. The object was, because Mr. Bathay made that reservation. He had had some others from Mr. Hewitt, and he made that reservation at the time of the sale.

Q. When was that sale?

A. I think it was the 13th of September, 1871, if I recollect correctly.

Q. What amount of land is reserved on that Bathay contract?

A. I have not got all here. I think Mr. Hewitt has. I will see in a moment what I have got here. Yes, here is a list which shows what is reserved under Hewitt's name,—3,832.28 acres.

Hosted by Google

Q. That is the amount that is reserved on that general order?

A. That is the amount as they have put it here. I know nothing about it any further. There is more than I supposed there was,—considerable. There has been a large amount of that patented. I don't know how much, but probably one-half.

Q. The half that has been patented,—out of whose scrip was the State paid for that?

A. I do not know. I sold the other day, to Mr. Hewitt, scrip for 1,000 or 1,200 acres, but I stipulated that it should go to pay for the lands that had been reserved, in order to get it off the contract.

Q. Has anything been paid out of the Bathay contract?

A. I gave an order for what was due me on the Bathay contract.

Q. Was it paid on this general order you refer to,—matured scrip?

A. Yes, sir; matured scrip. I gave an order to him, to allow him to patent so much land out of lands that had been already reserved on that contract. I did it this way for the purpose of being sure to have the lands taken off. I did not wish to increase or lessen—

Q. Did Mr. Hewitt pay you for this thousand or twelve hundred scrip you let him have?

A. Yes, sir; he paid me the money for it; the last of it I drew out of his bank a day or two ago.

Q. Then virtually he has no interest in the Bathay contract?

A. He has no interest in any way. I did not agree with Mr. Hewitt in the first place. I told him what I did agree with Mr. Bathay, and told him I should carry it out. Mr. Bathay stipulated when he signed my contract, that I should allow that to remain a short time. He promised to go to the office and turn back such lands as the law allowed him to.

Q. When were they to pay for the land?

A. I did not stipulate in the writing I gave.

Hosted by Google

Q. When did you understand they were to pay?

A. They were to take it off so that it would not interfere with my operation.

The Presiding Officer—It is now four o'clock. The Senate will stand adjourned until to-morrow morning at 9 o'clock.

Lansing, Thursday, May 9, 1872.

The Senate met and was called to order by the President *pro tem.*

The Sergeant-at-Arms made the usual proclamation.

Roll called: quorum present.

Absent without leave: Senators Neasmith and Sheley.

Mr. Putnam—Mr. President, I would ask leave of absence for Mr. Neasmith. I understand he is absent in consequence of sickness in his family.

Indefinite leave of absence was granted.

Mr. Romeyn—Mr. President: I do not desire to make a formal motion, but I would like to have Mr. Sheley informed by the Sergeant-at-Arms that the Senate is ready to proceed.

The Presiding Officer—The Sergeant-at-Arms will so inform him.

The Honorable Managers will proceed in support of their articles of impeachment. Senators will please give their attention.

Mr. Manager Huston—Mr. President, I would say in regard to Mr. Smith, who was on the stand when the Senate adjourned last evening, that he was taken sick during the night and he is not able to be here.

RICHARD S. THOMAS, RECALLED.

Examined by Mr. Manager Huston:

Question. What share of the ninety dollars you received for

Hosted by Google

the land in 32 N., 2 W., on section 16, from Mr. Allison, did you pay to Mr. Hewitt?

Answer. I paid him betwixt ten and twelve dollars.

RE-CROSS-EXAMINATION OF R. S. THOMAS.

Cross-examined by Mr. Shipman:

Question. What was that for?

Answer. For the use of his money in holding the lands for me.

Q. That was the compensation that you paid him?

A. Yes, sir.

Q. Would he not have been entitled to that whether you got the land or not?

A. No, sir.

Q. If you had used his money?

A. No, sir. I should not think he would be entitled unless I had had the land.

Q. Was it an interest in the land, or was it so much money due from you to him?

A. So much money due from me to Mr. Hewitt.

Q. It was not a share of the land, then, was it?

A. No, sir.

TESTIMONY OF H. H. HOYT.

H. H. Hoyt, a witness, produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Huston:

Question—Mr. Hoyt, where do you reside?

Answer—East Saginaw.

Q. What is your business?

A. Lawyer by profession.

Q. Are you acquainted with Van Dunham?

A. Yes, sir.

Q. What was his business when you was acquainted with him?

A. He was in the Land Office, when I knew him, as clerk, I understand.

Hosted by Google

Q. Did you have any transactions with him, in the Land Office, in regard to lands?

A. Only getting plats of lands.

Q. Of what towns did you get plats?

A. I can't tell you. We got plats of a large number of towns.

Q. Get any plats in Sanilac and Tuscola counties?

A. Yes, sir.

Q. What did you pay Van Dunham for the plats?

A. Two shillings a plat,—two shillings a town.

Q. Did you pay him anything in addition,—anything besides the two shillings?

A. I paid him nothing in addition, for the plats.

Q. Well, did you pay him any money?

A. Yes, sir.

Q. How much?

A. I think that we paid him $125.

Q. What did you pay him the $125 for?

A. For—I shall have to explain it a little in order to—

Q. Well, explain.

A. When I went to the Land Office to get the plats, I told Mr. Van Dunham that I wanted him to mark on the plats all the land that was not patented, and state on the plats the reason that they were not patented; and for that information, and for the information that we might want in the office, if we sent for lands that were not patented, if they were reserved or licensed, or anything that would indicate that they were not patented, we would pay him for that information, provided we got the land.

Q. When was it you paid him the $125?

A. I think it was in December last.

Q. What year?

A. Last year.

Q. Do you know Charles Conley, Sanilac county?

A. I know a man by the name of Conley,—I do not know whether his given name is Charles or not.

Hosted by Google

Q. Have you got the plats from Van Dunham,—did you buy any land in Sanilac county?

A. It was either in Sanilac or Lapeer, I forget which. I think it was in Sanilac.

Q. Was it claimed, or is it claimed, by any other person?

A. I think is was licensed land.

Q. Licensed to whom?

A. I think we got 120 acres—I think 80 acres was licensed to Mr. Conley.

Q. Do you know Adam Woolover?

A. Yes, sir.

Q. Do you own a piece of land that was licensed to him?

A. No, sir.

Q. Did you ever own it?

A. Yes, sir.

Q. From whom did you purchase it?

A. I purchased that land from a man by the name of Cornell.

Q. Where does Mr. Cornell reside?

A. I understand he resides at Coldwater.

Q. When did you purchase it of Mr. Cornell?

A. I think it was in January last.

Q. Can you give us a description of that piece of land?

A. I cannot. I think it was in 35–11–11.

Q. What is the name of the township?

A. I do not remember.

Q. Koylton—is it in Koylton, in Tuscola county?

A. I think it is; I do not remember.

Q. What have you done with that land; you say you have not got it now?

A. I have conveyed it.

Q. To whom?

A. To Julius Ferry.

Q. Where does he reside?

A. I am willing to answer any questions in reference to the

Hosted by Google

impeachment, but I am not willing to go into my private business transactions.

Q. My question is, where does this man reside?

Mr. Shipman—We will object to pursuing this matter. It seems to us immaterial.

The Presiding Officer. I do not see how it can be material where this party resides; and the objection is sustained.

Mr. Manager Huston—If the Chair will permit, I will state the object I have in introducing the testimony. The question is the same as the one that was raised when Mr. Woolover was on the stand, with regard to the same testimony. What we desire to show is, that this land has been conveyed and suit has been commenced, as was stated when the question was raised before, in the United States Court; and we expected to have Mr. Cornell here, if he is not already here, and connect all of these parties; that it was only a part of the same transaction to get this land if they could from Mr. Woolover, and connect it by this witness,—showing he got the information with regard to it, and paid for it, to one of the clerks in the office; and it seems to me it is competent for that reason. We want to show the last transaction,—what Mr. Woolover or any one in the office has had to do with this particular piece of land.

The Presiding Officer—Does the Honorable Manager propose to connect this party to whom the witness says he sold the land, with the clerk in the office also?

Mr. Manager Huston—I do not propose anything of that kind, because I do not know anything of this party to whom the land was sold, or whether there is such a person. I have some doubts about there being any such person; and that is the reason why I desire to show the whole transaction. I do not know anything about Mr. Ferry, and the witness declines to answer where he resides. The paper says he resides in the State of New York.

The Presiding Officer—The position of the Chair was not

Hosted by Google

based upon the refusal of the witness, but upon the objection coming from the counsel for the respondent.

Mr. Manager Huston—I suppose not. I merely state that to show that it does not look entirely fair upon its face, or the witness would be willing to state. If it was a fair and square transaction he would have no objection to stating to whom he sold the land. He bought the land of Cornell, and he bought information also with regard to this land from Van Dunham.

The Presiding Officer—The Chair has decided the question, but I will take a vote of the Senate. The question is, Shall the question proposed by the Honorable Manager Huston be admitted?

The Secretary will read the question.

The Secretary read the question, as follows:

"Where does Mr. Ferry reside?"

The Presiding Officer—Senators, those of you in favor of the question being put to the witness will, as your names are called, say Aye; those opposed, No. The Secretary will call the roll.

The Secretary called the roll, and the question was ordered to be put, by yeas and nays, as follows:

YEAS.

Mr. Begole,	Mr. Jenks,	Mr. Romeyn,	
Briggs,	Mann,	Stoddard,	
Dexter,	Moffatt,	Storrs,	
Gay,	Prutzman,	Waterbury,	12

NAYS.

Mr. Alexander,	Mr. Hannahs,	Mr. Wheeler,	
Ball,	Price,	Wood,	
Barber,	Putnam,	President	
Cawley,	Stockbridge,	*pro tem.*,	11

The Presiding Officer—The yeas being 12 and the nays 11, the question will be put to the witness.

Q. Where does Mr. Ferry reside?

A. He resides in Skenevius, N. Y.

Q. What did he pay you for the land?

Hosted by Google

Mr. Shipman—We object to the question, as being quite immaterial. In what way does it affect the Commissioner? There is no question but that the land was sold and obtained in the way that has been stated: does it make any difference what has become of the land,—whether the parties who bought it made money out of it or not?

The Presiding Officer—Does the Honorable Manager wish to be heard?

Mr. Manager Huston—The question is upon the same principle as the other. I did not suppose he paid anything for the land.

Witness—I can state if I am allowed.

The Presiding Officer—The witness will wait.

Mr. Manager Huston—We will withdraw the question, to save discussion.

The Presiding Officer—The question is withdrawn.

Q. You sold the Conely land?

A. No, sir.

Q. At the time you bought these lands whom did you negotiate with?

The Presiding Officer—Which land?

Mr. Manager Huston—The Woolover land.

A. Mr. Cornell.

Q. Did you have any negotiations with Van Dunham?

A. I wrote to him.

Q. In regard to purchasing that land?

A. I will state how it happened. I wrote to him. I got my plat from the Land Office, and this particular land was marked "vacant." I wrote to the Land Office for it; they stated to me that it was sold, and I wrote and wanted to know how it appeared on my plats, if it was vacant when it was sold? They stated to me the time it was sold, and who had bought it.

Q. You wrote to find out the price?

Q. To whom did you write to find out the price,—Van Dunham?

Hosted by Google

A. Yes, sir; and Mr. Cornell came to our place and I bought the land.

Q. Did you get an answer from that letter to Van Dunham?

A. I believe I did; I will not be positive.

Q. Have you got that letter with you?

A. I have not.

Q. Did you write to Cornell yourself?

A. I don't think I did.

Q. Did you know how it was when Conley came down to see you, and you notified him.

A. I don't know that I did.

Q. Did you ask Van Dunham to notify Cornell?

A. No, sir.

Q. Did Cornell say anything about how he learned that you wanted to buy it?

A. No, sir.

Q. What did Van Dunham write you in regard to Cornell, in answer to your letter?

Mr. Shipman—We object.

Mr. Manager Huston—We withdraw the question.

CROSS-EXAMINATION OF H. H. HOYT.

Cross-examined by Mr. McGowan:

Question. Did you have any talk with Commissioner Edmonds, in relation to the Woolover lands?

Answer. I never knew Mr. Edmonds, not even by sight, until after these proceedings were commenced. I never had any conversation with him.

Mr. McGowan—That is all.

Witness—I would like to state one thing.

The Presiding Officer—The witness may explain.

Witness—As far as I know, no one, directly or indirectly, was interested in the purchase of this Woolover land, as far as we were concerned. That, so far as we were concerned, was a *bona fide* transaction.

Hosted by Google

Mr. Shipman—No one but who?

A. Mr. Draper and myself,—my partner.

The Presiding Officer—Is this witness one of the firm of Hoyt & Draper?

Witness—Yes, sir.

Mr. Manager Cochrane—Did you ever write to the Commissioner in regard to this land?

A. No, sir.

Mr. McGowan—Did you write to Cornell after receiving a letter from Van Dunham?

A. I don't think I did.

Q. Were both of those pieces purchased by Hoyt & Draper, —the Conley piece and the Woolover piece?

A. The Woolover piece was purchased by myself.

Q. The other piece by Hoyt & Draper?

A. Yes, sir.

Q. Did anybody have any interest in these pieces, but yourself and partner?

A. A man by the name of B. E. Brown had an interest in the Woolover piece.

Q. Did any one in the Commissioner's Office?

A. No, sir.

Q. Did any one in the Commissioner's Office have any interest in any of your transactions?

No, sir.

JAMES T. MUNROE, RECALLED.

Examined by Mr. Huston:

Question. I desire to ask you whether you paid Mr. Barnard anything beside the horse, for the lands you got of him last February?

Answer. No, sir.

CROSS-EXAMINATION OF JAMES T. MUNROE.

Cross-examined by Mr. McGowan:

Question. A horse, or horse and buggy?

Answer. A horse.

Hosted by Google

Mr. Shipman—Part of that land came from Mr. Hewitt. Did you understand to whom the other half belonged, or any of the pieces?

A. I have heard, but I don't remember.

Q. Whether Mr. Hewitt, or other parties?

A. I think, to another party.

Mr. Shipman—That is all.

TESTIMONY OF WILLIAM COFFRON.

William Coffron, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Huston:

Question—Where do you reside?

Answer—Beechville, Lapeer county.

Q. Have you bought any lands of the State since the 1st of January, 1871?

A. Yes, sir.

Q. What time was it you purchased?

A. I think in June.

Q. Can you give a description?

A. I bought the N. W. of the N. E. of 2, town 10–11.

Q. How many acres?

A. Forty acres.

Q. How did you apply for the land?

A. I went to Beechville, and sent fifty dollars to the Land Commissioner, for that description of land.

Q. Did you get your land?

A. Yes, sir, I got my title all right, I think somewhere in the last days of June, and a draft for $17.25.

Q. Was there any letter accompanying it?

A. Yes, sir.

Q. Have you looked for that letter?

A. I did. I looked for it when I left, but it has been mislaid and I cannot find it.

Q. What was the contents of the letter?

Hosted by Google

A. I think, as near as I can remember, it was that I had not sent money enough to purchase the land, and he had to purchase it with scrip, or something to that effect.

Q. You heard the testimony of Mr. Hoyt that was just on the stand, in regard to the lands he bought in Sanilac county?

A. Yes, sir.

Q. Do you know anything about that land?

A. Yes, sir.

Q. What do you know about that forty acres?

A. Town 7?

Q. Yes.

A. All I know about it is, I sent last summer for some plats of that town, and they sent with the plat—by the plat that forty acres was marked reserved or licensed,—licensed, I think.

Q. Is that the Conley land?

A. No, sir.

Q. The other 40?

A. That was the other 40 in 7,—the N. E. of the N. W. in 7.

Q. Can you recollect whether it was marked "reserved," or "licensed," or "sold?"

A. I think it was "licensed."

CROSS-EXAMINATION OF WILLIAM COFFRON.

Cross-examined by Mr. McGowan;

Question—Was that an exact 40 that you purchased—the N. W. of the N. E. of 2?

Answer. I think he wrote it was a fraction; I did not know it when I sent the money.

Q. You got your patent?

A. Yes, sir.

Q. Did you notice the description in the patent?

A. Yes, sir.

Q. Was it fractional?

A. I do not remember that,—I cannot say.

Hosted by Google

Q. Have you got your patent with you?

A. No, sir, I have not; I could have brought it if I had been authorized.

Q. How much was to run to you in the whole?

A. $17.25.

Q. You sent for 40 acres?

A. Yes, sir? I sent $50.

Q. They wrote back to you that the amount which you sent was not sufficient to pay for the land?

A. Yes, sir.

Q. And they would enter up the scrip, and send you the balance?

A. Yes, sir.

Q. Was there anything else except the price of the scrip deducted from the money?

A. I do not know.

Q. You say they sent you a draft?

A. They sent me a draft.

Q. Didn't you know how many acres there was of the land after you got it?

A. I cannot tell.

Q. Did you not know it was more than 40?

A. I understood after I got my title that there was more than 40 acres, but I cannot say how much.

Q. Was this the N. W. of the N. E. of 2, swamp land,—ten-shilling land?

A. Yes, sir.

RE-DIRECT EXAMINATION OF WILLIAM COFFRON.

Re-direct examination by Mr. Manager Grosvenor:

Question—Can you remember whether there were 41 acres in it, or whether it was 40 and a fraction?

Answer—I cannot say positively, but it strikes my memory that it was 40 acres and some hundredths. I cannot say positively. I could have brought the patent.

Q. Cannot you say whether it was 20 hundredths.

Hosted by Google

A. I cannot say anything about it.

Q. It was less than an acre over 40?

A. I think it was. I could not say positively.

Mr. Shipman—There would not have been money enough, at all events, to pay for what you got in cash?

A. That is the way I understood it when I got my title.

TESTIMONY OF DAYTON G. CANFIELD.

Dayton G. Canfield, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Huston:

Question—Where do you reside?

Answer—Michigan Falls, New York.

Q. Did you ever reside in the State of Michigan?

A. I resided here in 1840, one year.

Q. If you ever bought any lands of the State of Michigan during the year 1871, state when, and the amount?

A. I bought in 1871, June 14, 80 acres,—the E. ½ of the N. W. ¼ of section 36, township 23 N., range 9 W.

Q. What was that land per acre?

A. Four dollars.

Q. What was it denominated; that is, was it Agricultural College land, or State swamp land?

A. Swamp land.

Q. Did you buy any other swamp land?

A. I bought, in September, another piece in the same township, on 3.

Q. How did you pay for that land?

Mr. McGowan—Which?

Mr. Manager Huston—The land that you bought in September was swamp land also, was it?

A. Yes, sir.

Q. How did you pay for it?

A. I paid then two dollars.

Q. In what kind of funds?

A. I sent the money, and they put it into State scrip.

Hosted by Google

Q. How did you first ascertain that there was any such thing as swamp land scrip in this State?

A. I ascertained then, at the Land Office.

Q. Who mentioned it to you; who mentioned it first?

A. I think the first when I was there in April, Mr. Porter.

Q. What was said about it?

A. He said that they could furnish me State scrip which would be then, at that time, sixty-five cents on the dollar. When I sent the money they said State scrip had gone up and would cost me seventy.

Q. Did you have any knowledge of the scrip before that time?

A. No, sir.

Q. How did you expect to pay for those lands when you looked them up, before your attention was called to the fact?

A. To pay for them in money, nothing else to pay with.

CROSS-EXAMINATION OF DAYTON G. CANFIELD.

Cross-examined by Mr. McGowan:

Question—You learned of this scrip business in April, you say?

Answer—Yes, sir.

Q. You bought your first land that you have mentioned, in June?

A. The papers are dated at that time; yes, sir.

Q. Did you make your application for it in April, for that first piece that was deeded in June.

A. Yes, sir.

Q You bought your next piece in September following?

A. Yes, sir.

Q. Now, when you say you sent on money for the piece that you bought on section 3, in the same town, did you send the money for the whole amount, or simply what was necessary to purchase the scrip?

A. For the last piece I sent, the money rated at seventy cents on the dollar.

Hosted by Google

Q. For the scrip?

A. Yes, sir. And then, after that, the scrip went up, and I had to send a few dollars more. I don't remember exactly; they wrote me how much there was, and I sent the balance.

Q. Was there any instructions in your letter, that the land should be entered with scrip?

A. Nothing, only where the scrip had gone up—I think that was the only thing—from the seventy cents in the previous purchase.

Q. What I want to get at is, whether you instructed the Commissioner or his Deputy to enter that land with cash,—what we call a cash entry,—or with scrip?

A. Well, I could not say.

Q. And you only sent enough money to pay for the land in scrip at seventy?

A. To buy the scrip at seventy cents,—yes, sir.

Q. Had you made any arrangement to have your lands entered with scrip before you sent the money?

A. Nothing more than what they said they could do;—they said they could do so and so.

Q. Did you arrange with Mr. Porter to have it done so, when you bought your lands?

A. I think I did. I think that was the understanding, if I did buy, that that would be the arrangement.

Q. Do you know whether these lands that you bought, the first for four dollars an acre, and the latter for two dollars an acre, were what were called "graduated swamp lands?"

A. Yes, sir; I understood at the office that the 7th of July these lands would be in the market at less value,—two dollars an acre,—those that were at four then.

Q. When did you look over these lands?

A. I looked over these lands in April, 1870, and purchased in June, the second purchase.

Q. When you looked over the land in June, did you expect to pay for them in money or to have them entered on scrip?

Hosted by Google

A. I rather think that my impression was that I should locate them with scrip.

Q. Did you look over the land in April previous to having the talk with Mr. Porter in April about the scrip?

A. Yes, sir.

Q. You had had this talk about the scrip before you looked over the land at all?

A. Before I had been there.

Q. Then did you expect to enter any of your land paying the full value at that time?

A. No, sir; I did not know as I should buy.

RE-EXAMINATION OF DAYTON G. CANFIELD.

Examined by Mr. Manager Grosvenor:

Question. What was the price of these lands you bought in September?

Answer. Two dollars.

Q. Why did not you buy them earlier in the season?

A. I had not seen them.

Q. Were you told that the land would be less price at that time than before?

A. Yes, sir. I knew it would, but I had not seen this land.

Q. Who told you that?

A. I think it was a tall gentleman, in the office.

Q. What is his name?

Mr. McGowan—Porter?

The Witness—No, sir.

By Mr. Manager Grosvenor:

Q. Barnard?

A. Yes, sir.

Q. When did he tell you that the price would be changed?

A. The 7th of July; I think that was the date.

By Mr. Manager Huston:

Q. How long before the 7th of July did he tell you?

A. Some time in June.

Hosted by Google

RE-CROSS-EXAMINATION OF DAYTON G. CANFIELD.

Re-cross-examined by Mr. McGowan.

Question—You understood that the price of the lands was fixed by law ?

Answer—I think they conveyed that idea.

Q. Was not it a matter of public notoriety that the lands were graduated at six, four, and two dollars per acre, as time passed ?

A. Graduated by same act. I don't remember what the conversation was in regard to it.

The Presiding Officer—The Senator from the Twenty-ninth (Mr. Ball) sends up the following question :

The Secretary read the question, as follows :

"Did you direct the land first purchased to be entered with money, and send the money for the same ?"

A. I don't think I did. To purchase it with State scrip, by their conversion into scrip, I sent the money,—not the full value at four dollars an acre, but what it would amount to, with scrip at sixty-five cents; and afterwards they wrote me that it would be seventy, because scrip had gone up.

By the Presiding Officer—And you afterwards sent the difference ?

A. Yes, sir.

RE-EXAMINATION OF DAYTON G. CANFIELD.

Examined by Mr. Manager Grosvenor :

Question—I want to ask you where you first learned this ?

Answer—Mr. Porter the first, and Mr. Barnard the second.

Q. It was in the office ?

A. Yes, sir.

Q. The clerks in the office ?

A. Yes, sir.

Q. They informed you of it ?

A. Yes, sir.

Hosted by Google

TESTIMONY OF G. F. GILLAM.

G. F. Gillam, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Huston:

Question—What is your business?

Answer—Clerk in the Land Office.

Q. How long have you been a clerk in the Land Office?

A. Since the first of last June.

Q. What are your duties there?

A. I have charge of the reservations on road contracts.

Q. Is there a book in which those reservations are kept?

A. Yes, sir, there is.

Q. [Showing witness a book.] Is this the book?

A. Yes, sir.

Q. Will you turn to page 36. [The witness turned to place designated.] I call your attention to whether there are any entries in the margin in pencil?

A. Yes, sir; there is an entry in the margin.

Q. State what it is,—read it.

A. It says: "Applied for patents—check deposited, instead of reservation. See Barnard."

Q. What amount of land is there, there, that the check is deposited instead of the reservation?

A. 1,000 acres.

Q. What is the price of those lands?

A. Ten-shilling lands.

Q. Whose check is deposited for these lands?

A. I could not tell you.

Q. Have you examined the plat books of that same township,—this township?

A. No, sir: I have not.

Q. Let me call your attention. When I was in the office this morning, did you not turn to the plat of that town with me, and look at it?

Hosted by Google

A. I looked and said that they were not patented; but I did not look on the margin to see.

Q. Did you look at the descriptions?

A. Yes, sir.

Q. What letter was on the description?

A. "H."; referring to Cyrus Hewitt,—he was the man that reserved the land.

Q. Do you know what the date of the filing of the check was?

A. I could not give the exact date; it was during the extra session of the Legislature that the change was made from a reservation to an application to patent, on the check.

Q. Did you examine the books to see whether the lands had been patented?

A. Yes, sir.

Q. Have they been patented?

A. They have not.

Q. Did you bring up Mr. Hewitt's application,—the application he filed?

A. To reserve?

Q. For these lands,—the application with the check?

A. No, sir, I did not.

Q. When were these lands reserved by Mr. Hewitt?

A. August 16th, 1871, and August 11th.

Q. Do you know what the amount of the check is?

A. I do not. I never saw the check,—I only know from hearsay.

Q. You keep that book?

A. I keep this book.

Q. What does that entry mean, "See Barnard—applied for patents?"

A. I minuted that down to refer to him if any questions should be asked about it,—I would know whom to refer to with regard to it.

Hosted by Google

Q. Mr. Barnard had knowledge of this reservation?

A. Mr. Robinson told me to take these off of the reservations, that he had seen Mr. Barnard about it, and it was all right; so I made a reference to see Barnard. I never had any talk with Mr. Barnard about it myself, one way or the other.

Q. How long have you had charge of that book?

A. I think it was about the first of July that I commenced to work on this book. I had been here about a month.

Q. Who made those reservations for Mr. Hewitt,—Mr. Hewitt in person, or somebody else for him?

A. I could not say; Mr. Barnard usually receives applications for reservations, and then hands the application to me.

Q. What is the amount of Mr. Hewitt's reservation there, in all, on that book?

A. Do you mean in the whole book?

Q. No; on those two or three pages?

A. On this contract I think it was about 8,000 acres.

Q. Upon what contract were these 8,000 acres reserved?

A. Of Theodore Bathay.

Q. What kind of order did Mr. Hewitt have from Mr. Bathay?

A. It was an order to reserve.

Q. Did you bring up the order?

A. I did not bring the order.

Q. You read that order?

A. I read the order.

Q. I want you to state what kind of an order it was,—what the effect of that order was,—whether it carried anything with it?

A. My recollection is, that it does not carry the matured scrip with it.

Q. What do you mean by, it would not carry the matured scrip with it?

A. Mr. Hewitt could not patent the lands on his own order; he would have to have an order from Mr. Bathay to patent the lands,—that is, on Mr. Bathay's scrip.

Hosted by Google

Q. Do not the books of the office show that this contract of Mr. Bathay's has been assigned to Obed Smith?

A. Yes, sir.

Q. Assigned last September, was it not,—look and see if it is not a matter of record there?

A. The contract was assigned September 13th, 1871.

Q. I wish you would explain about it being necessary to have a further order, so that we may understand. Explain that matter fully to the Senate?

A. The order I looked at, he seemed to have made Mr. Hewitt an agent for selling land for him, to the amount specified in the order, though I think the order does not specify any amount; it says: "Allow Cyrus Hewitt to reserve land on my contract." He simply makes him an agent to sell land,—the lands belonging to Mr. Bathay, the contractor, and can be patented on the contractor's order, but not on the order of this agent,—for he had no authority to receive patents. That right was reserved back in the contract.

Q. If Mr. Bathay assigned all of his interest in that contract to Mr. Smith on the 13th of September, then what rights would Mr. Bathay have to make applications to have patents issued to Mr. Hewitt, or anybody else, upon that contract?

Mr. Shipman—We object. It seems to me we are getting now in a question of law which we can settle as well as the witness. If the order was given before that, the assignment might be made subject to the order, I suppose. At all events it is a question of law.

Mr. Manager Huston—I desire to get at the understanding in the office,—the practice in the office.

Mr. Shipman—We will not object to the understanding in the office.

Mr. Manager Huston—Whether it carried the scrip with it or not?

A. I say the order did not carry the scrip with it. I never had any talk with the Commissioner about that particular point, that I know of.

Hosted by Google

Q. What was the effect of the assignment to Mr. Smith?

A. I do not recollect now exactly the terms of the assignment to Mr. Smith, for there were no terms expressed. I should give my own opinion, that is all. I never had any talk with the Commissioner about it, one way or the other, that the lands would go over to Mr. Smith.

Q. I call your attention again to the understanding in the office with regard to that matter. When Mr. Smith completes his contract, and the work is approved by the proper authorities, can or cannot he dispose of his scrip, his credit that he would receive for that work, as he sees proper to do, without any reference to these reservations?

A. No, sir, he could not.

Q. He could not sell his credit?

A. No, sir, not if he had land reserved.

Q. Without any reference to this, or Hewitt's. You say it did not carry the scrip with it; could not he dispose of his scrip?

A. No, sir; he would have to father lands himself, of course; would have to use his scrip to take them up.

Q. He would have to take the lands himself, and not Hewitt?

A. Yes, sir, unless Mr. Hewitt saw fit to take them. It would be a matter between them, of course.

Q. Would Mr. Hewitt be allowed to have this land patented that is reserved upon the Bathay contract, to other parties,—parties to whom he may have sold the land,—and pay for the land with other scrip, or money?

A. Yes. sir; that is the custom, as I understand it.

Q. That is the general practice in the office?

A. Yes, sir.

Q. What is the object, then, if it is allowable, to reserve lands in that way? What is the object in doing it? Whom is it to benefit, if they are really to be charged up against the contract upon which they are reserved?

A. They are charged up to the contract.

Hosted by Google

Q. When finally patented?

A. When the State has sold the lands, and it has accomplished its object. The object it has, is to sell the lands, whether they are put up on this particular scrip, or some other. I suppose that is the idea.

Q. Why is Mr. Hewitt allowed to reserve upon this order, and hold lands upon this order, and, when he has them patented, pay for them in some other way?

A. I simply give my opinion; that is all.

Q. What do you understand about it?

A. I understand that the object the State has, is to sell the lands; that a man shall not hold lands from the market unless he takes them; and, if he takes the lands, the State has accomplished what it wanted,—the lands are sold,—and of course it releases the contract. If it is patented up on other scrip, it releases the particular contract they are reserved on, to that amount.

Q. If Mr. A. had gone into the office on the 1st of last March, and applied for any of that 8,000 acres that is reserved for Mr. Hewitt, could he have bought the land?

A. No, sir.

Q. Then it is held on that contract in that way, until Mr. Hewitt sells it, is it not?

A. Yes, sir.

Q. When Mr. Hewitt has sold any of those lands, and paid for them with money or other scrip, would he be allowed to reserve again on this contract?

A. Yes, sir. The way the order reads, he would be allowed to reserve as long as the order was not full, or as long as the contract was not overdrawn.

Q. Will you look and see whether this is the order Mr. Bathay referred to?

A. Yes, sir; that is the order.

[Introduced in evidence.]

Hosted by Google

[EXHIBIT BB.]

MIDLAND CITY, July 13, 1871.

To the Hon. Commissioner of the State Land Office:

DEAR SIR—Please allow Mr. Hewitt to reserve on my road contract, it being the Midland City, Houghton Lake and Traverse City State road,

And oblige your humble servant,

THEODORE BATHAY.

Indorsed on the back, as follows:

"Theodore Bathay's order to Cyrus Hewitt to reserve any lands.

"Received at the State Land Office, Lansing, M., July 14, 1871."

Q. Are there any other parties who are dealing in the office in the same way as Hewitt, that you have knowledge of?

A. There are.

The Senator from the Twenty-ninth sent to the Chair the two following questions, which were read by the Secretary:

"Question—Would Hewitt be allowed to reserve after the Bathay contract was assigned?"

Answer—I should say not without an order from Mr. Smith, unless there was some understanding that Hewitt was an agent in selecting land, and was allowed to continue under the arrangement between the parties.

"Question—Were any such reservations made for Hewitt after such assignment was made by Bathay to Smith on that contract?"

Answer—There was not. The last reservation was August 16.

The Senator from the First sent to the Chair the following question, which was read by the Secretary:

"Question—When was the Bathay contract assigned?"

Answer—September 13. There is one reservation September 23, on the Bathay contract.

By Mr. Manager Huston—What is the amount of that reservation?

Hosted by Google

A. 215.42 acres. My recollection is now that the assignment was made before it was filed in the office.

By Mr. Manager Grosvenor—To what extent would Hewitt be allowed to reserve on the Bathay order, under the usage of the office?

A. As long as there was unmatured scrip back on the contract.

Q. To the full extent of the scrip?

A. Yes, sir.

Q. In the event that he had reserved to the full extent of the scrip, and in a few days afterwards he entered that with money or with matured scrip, would he be allowed again to reserve under the same order to the same extent again?

A. Yes, sir.

Q. And so over and over as often as he pleased?

A. Yes, sir.

Q. What is the total amount of this Bathay contract?

A. 33,690, at ten shillings an acre.

Q. How is it, if these lands could not be patented without Bathay's order, as you stated a short time ago, that they can be patented if Mr. Hewitt pays for them in some other way besides having them applied on the Bathay contract?

A. As I told you, if the State gets their pay, of course that is all they want and all they expect.

Q. Who released the Bathay claim?

A. That would be the contractor.

Q. Suppose Bathay does not release?

A. If Mr. Bathay would not release, then, of course, he could not have the land.

Q. In that case, when a thousand acres is released, did Bathay direct it to be released?

A. I think the understanding between the contractor and Hewitt was, that Hewitt was to have these lands if he wished to patent them up at any time. It is now the understanding between Mr. Smith, and Mr. Hewitt deals with Mr. Smith now.

Hosted by Google

The Senator from the Third (Mr. Briggs) sent to the Chair the following question, which was read by the Secretary:

"Question. At what date was the assignment of the Bathay contract to Smith filed in the office?"

Answer—I could not say without referring to the assignment.

By Mr. Manager Huston:

Q. Can you give us any information with regard to what quantity of lands that was originally reserved on unmatured scrip, that the scrip is matured, where patents ought to be issued?

A. I could not, now. You wanted me to look that up this morning. It would probably take two days at least to get any correct idea of it.

Q. Is the amount large, or small?

A. There is quite a large amount.

Q. How long has it been paid off in that way, with matured scrip,—how long has it been running?

A. I could not give any very good idea of that, without looking it up very closely.

Q. Is not there quite a large amount that has been running ever since Edmonds has been in office?

A. There is some that has been matured clear back to 1869,—generally some conflict, though, about it, between the parties.

Q. Is not there some that there is no conflict about?

A. There is some.

Q How long would it take you to make up a statement of the amount?

A. I think it would take at least two days. It would have to be all compared with the plat-books, to see if they are patented, and box up the matured scrip account and everything of the kind.

Q. Will you do that, so as to bring it in?

A. Yes, sir.

The Senator from the Twenty-fifth (Mr. Waterbury) sent to the Chair the following question, which was read by the Secretary:

Hosted by Google

Question—If Mr. Hewitt could not obtain patents with the matured scrip of the Bathay contract without another order from Bathay, can any one? Can any one but Bathay get them by paying for them?"

Answer—There could not.

By Mr. Manager Grosvenor:

Question—If the object you had in view, mainly, as you stated, was to sell the land, why would you not allow any other person to come in and enter the land reserved?

Answer—They belong to Bathay, or Smith, or Hewitt now. They belonged to those men that have reserved them.

Q. Do you allow contracts to be divided in that way,—giving to one man the right to reserve and to another man the right to receive the benefit from the scrip?

A. Sometimes. There are several orders on this contract—some to reserve, and perhaps some to reserve and receive patents.

Q. Is not that right to reserve considered a very valuable right to a man dealing in lands?

A. It is a privilege they seek very often.

Q. It is one sought after, and used in the manner that this has been with Hewitt?

A. Yes, sir; sometimes.

Q. It is the rule of your office to allow reservations to be made more than once to the extent of the contract?

A. The rule at the office is that no man shall be over-reserved at any one time.

Q. But if he lifts that reservation by entering some of the land reserved, he may *load* again, may he not?

A. Yes, sir; if he relieves the contract and purchases the land.

Q. Then you make this right of reservation available to cover any amount of land, from time to time, so that there is no more than the full *quantum* at one time covered. Is that so?

A. Yes, sir.

Hosted by Google

The Bathay contract and the assignment is now shown to Smith and he is asked—

Q. When was the assignment of that contract filed?

A. The assignment of the contract to Smith was dated September 13th, 1871, and was filed September 17th, 1871.

The Presiding Officer—The Senate will now take an informal recess for ten minutes.

After recess,

The President *pro tem.* called the Senate to order.

Examination of the witness Gillam continued:

Question. What knowledge have you, if any, in regard to lands being withheld from the market in the office, not on matured scrip, not any unmatured scrip?

Answer. I cannot tell you anything about it.

Q. Whether you know of any swamp land being withheld from sale where it is not held on scrip,—not on unmatured scrip?

A. I don't think I have any knowledge of it,—no positive knowledge. It is something that I do not have any charge of, and I never take pains to look up.

Q. Have you ever examined the plat-books of the office?

A. Yes, sir.

Q. Has your attention been directed to the reservation upon these plat-books?

A. Yes, sir.

Q. How are the reservations made, usually,—on the plat?

A. Usually, the party applies for the land to have them reserved, and the initials of his name will be put on the description he wants, and there will be a reference on the margin of the plat-book, to reserve.

Q. In pencil, or ink?

A. In pencil, usually.

Q. Have you ever had any talk with Mr. Edmonds, or his Deputy, upon this subject of reserving land that was not reserved on unmatured scrip?

A. No, sir, I don't know as I ever did have a word.

Hosted by Google

Q. Did you ever call Mr. Edmonds' attention to the fact that there was a large amount of lands held upon scrip that had matured, that should be patented?

A. I had some talk with Mr. Edmonds along the forepart of winter, I think, about that; yes, I just spoke to him about it.

Q. What was the conversation?

A. I told him there was quite a large amount of land that was matured lands, reserved, and I think I asked him what he was going to do about that, and he said, before the land could be assessed, he should notify every man to patent up his land.

Q. Whether any of that scrip had matured before March, 1871?

A. Yes, sir.

Q. Before 1871?

A. Yes, sir.

Q. What time are the treasurers of the counties notified of the lands that have been patented during the preceding year?

A. I cannot give you the date.

Q. I want to call your attention to the school lands of the State, and ask you if you know what the practice is in regard to withholding school lands?

A. I don't know as I could tell you.

Q. Suppose a party applies for lands, and deposits a check with the Commissioner. What do you know about that?

A. I have seen lands marked that way as being applied for by check. That is all I can say about it.

Q. Is that not a common thing in the office in regard to school lands?

A. I have very frequently seen such descriptions applied for by check.

Q. How is it in regard to Agricultural College lands. Have you not noticed upon the plats the same thing?

A. I don't remember any instance now. I think very probably I have.

Hosted by Google

Q. Do you know of any cases where Mr. Hewitt has made any reservation of Agricultural College lands?

A. No, sir; I don't.

Q. Do you know whether Mr. Cyrus Hewitt has reserved any lands during the last six months, any kind of State land?

A. I don't know that he has. I don't recollect of any.

Q. You can tell by making an examination?

A. Yes, sir; I can tell by looking the matter up.

Q. I wish you would do so?

A. I will.

Q. Will you also make a statement of the sum total of the reservations, since the first of January, 1871, to Mr. Hewitt?

A. Yes, sir; I will.

Q. Will you turn to the reservation of Edmund Hall?

A. It is on page 59.

Q. What contracts?

A. Twenty-two, twenty-three, and twenty-five.

Q. What is the date of the contracts?

A. I cannot give you the date of the different contracts. I see one entered August, 1868. I don't know what the reference is,—whether the date, or when the contracts were accepted.

Q. Is the last figured up, so you can tell the total number of acres at the foot of the page?

A. Yes, sir; they are.

Q. What is the amount?

A. 11,685.81 acres.

Q. Tell me, by looking over the pages, what proportion of those lands have been patented.

A. I should say four-fifths, perhaps.

Q. Are there any other pages?

A. Page 188.

Q. What contracts have you there?

A. This contract No. 2, west division of Alma and Clinton

Q. Whether that scrip is matured now, on those first pages?

A. Yes, sir; it is all matured.

Hosted by Google

Q. Go back to page 188. How is it on page 188?

A. That is all matured.

Q. How many pages are there, there?

A. Two pages.

Q. How much land?

A. There are about four thousand acres in all entered here.

Q. What proportion of that is patented?

A. There is about one-half.

Q. When did that scrip mature?

A. I will have to speak from recollection. I think it was last October.

Q. Will you turn to the next page of his account?

A. Yes, sir, another contract.

Q. What is the number of that contract? What contract is it?

A. Contract No. 1, west division of Alma and Clinton road.

Q. What is the date?

A. It is a contract in which Mr. Hall acts; it is a contract of Van Riper and Hitchcock.

Q. The date of it?

A. The contract was approved Nov. 18th, 1868.

Q. What amount of land was reserved on that contract?

A. That was the time it was made.

Q. When was it completed?

A. It was completed in October or November last, when the last warrant was drawn.

Q. The scrip is all matured?

A. Yes, sir.

Q. How much is there reserved on that contract?

A. Reservations are rather light,—perhaps there are two thousand acres.

Q. What proportion had been patented?

A. About two thirds of this, I guess.

Q. Turn to the next page.

A. That may be laid as late as December,—the last warrant.

Hosted by Google

Q. What contract?

A. The contract of John R. Van Riper. E. Hall is acting for contract No. 27, on the Ionia and Houghton Lake road.

Q. Is that matured?

A. Yes, sir.

Q. What is the amount of reservation?

A. It is not all footed up; but the contract was reserved full at one time to the amount of $16,000 worth of land.

Q. How much has been patented,—what proportion?

A. Three-fourths, perhaps.

Q. Is there any further?

A. Yes, sir.

Q. Will you turn to those?

A. E. Hall's contract, No. 28, Houghton Lake road.

Q. Is that matured?

A. Yes, sir.

Q. How many acres does the contract call for?

A. For $6,400 worth of land.

Q. What amount has been reserved?

A. It was reserved full, exactly.

Q. What of that full amount that has been reserved from the beginning, or has there been any double reservation?

A. There was some patented up last summer.

Q. Some patented last summer, and others reserved?

A. Yes, sir, and some more put on.

Q. What proportion is patented on that contract now?

A. Two-thirds.

Q. This that was reserved last summer after part had been patented up, was that reserved after the scrip had matured? Will you look and see if the last reservations were made after the scrip had matured?

A. I have not got the date of the warrant; it is warrant 891. I think it is the latter part of December. There is one "forty" put on here December 4th; the rest of the reservations are back of that.

Hosted by Google

Q. I wish you would turn back to the other contracts and look and see whether there has been any double reservations on any of the others,--those that you passed by,—whether they have been reserved full, and lands patented, and then other reservations made.

A. Well, I could not say without looking it all over particularly.

Q. You will examine that when you make up your statement of the other matters?

A. Yes, sir.

Q. Are there any further contracts of Mr. Hall's?

A. Yes, sir; there is one more.

Q. What contract is that?

A. It is a contract of George L. Hitchcock.

Q. What is the amount?

A. The amount is $6,200.

Q. What is the amount of reservations?

A. Well, it is a little less than the contract,—a few hundred dollars less than the amount of the contract.

Q. Have there been any double reservations there?

A. Well, that I could not say, without looking it over.

Q. What proportion of those lands have been patented?

A. There is, perhaps, a third.

Q. Is that matured?

A. No, sir.

CROSS-EXAMINATION OF G. F. GILLAM.

Cross-examined by Mr. McGowan:

Question—That book before you, Mr. Gillam, you call the "Reserve Book"?

Answer—Yes, sir.

Q. What accounts are kept in that book?

A. Accounts with contractors of lands that they reserve while they are completing their contracts for State roads.

Q. How do you ascertain in the first instance how much they are entitled to?

Hosted by Google

A. Well, they have a contract drawn up between the contractor and the State. The contract states how much land they will receive for doing their particular work.

Q. Where is that contract kept?

A. It is kept in the office of the Swamp Land Commissioner.

Q. For that contract you ascertain the amount of credit that is due to the contractor?

A. Yes, sir.

Q. For his job?

A. Yes, sir.

Q. Then, how do you keep the account?

A. Well, when the contractor applies to reserve any land, the application is received and a record made of it, in a book, in the order and date of receiving, and the order is filed away.

Q. Are these cases that you have given of Mr. Hall and Mr. Hewitt exceptional cases, where parties were allowed to reserve lands, and then patent them up on matured scrip before the contract had matured on which they were reserved?

A. Well, I don't know as I could give you another instance now, in particular; but I have no knowledge of one party being dealt with any different from another about it. The practice would be the same whether they took advantage of it or not.

Q. How is it with Obed Smith's contracts?

A. Well, in what respect?

Q. Did he reserve lands on his various contracts, and then have any of them patented up by matured scrip belonging to other contracts?

A. Well, I don't know as I could tell you without looking up his contracts.

Mr. Manager Huston [to the witness]—You have got the record, I guess, right there, so you can tell.

The Witness—Whether he has patented up any of these lands on other scrip I could not tell, without tracing the mat-

Hosted by Google

ter up, and seeing on what scrip the lands were patented; they might have been all patented on the road, and they might not.

Q. The law allows the contractor to have the full amount of his contract reserved to him, does it, after the contract is filled?

A. Yes, sir.

Q. Now, when these lands are patented that have been reserved on unmatured scrip, are they usually patented by matured scrip, or for cash?

A. They universally use matured scrip, these contractors do. I guess they don't know much about the cash part.

Q. This matured scrip is a credit which belongs to the contractor on contracts already completed?

A. Yes, sir.

Q. And on which the State owes the land?

A. Yes, sir; the matured scrip is a credit for a certain amount of land.

Q. Now, what change, if any, has there been made in the form of orders required of the contractors to these men who make the reservations?

A. Mr. Edmonds made a change. I forget exactly the date. He made a change to require contractors to file orders that would carry the scrip with them, a certain time; the date I could not say now.

Q. Now will you explain a little more fully what you mean by carrying the scrip with them?

A. An order that would allow the man that has the order, to receive patents for the lands when the scrip matures.

Q. In his own name?

A. Yes, sir, in his own name?

Q. Previous to that time, the practice of the office was to allow orders to parties, that would not carry the matured scrip?

A. Yes, sir.

Hosted by Google

Q. Reservations were made up in the name of the party holding the order?

A. Well, if it was an agreement between the contractor and the man that held the order.

Q. I don't mean made up in the technical sense in the office, but the reservations were made up in the name of the party holding the scrip?

A. Yes, sir.

Q. For instance, this order given by Bathay to Hewitt. The reservations were made in Hewitt's name, were they not?

A. Yes, sir.

Q. And you say that Hewitt could not patent the lands in his own name?

A. Yes, sir.

Q. It had to be patented up to Bathay, or Bathay had to go and direct whether to issue the patent to Hewitt. Is that what I understand?

A. Yes, sir.

Q. Mr. Edmonds has changed that, so that the order in the first instance must carry the patent with it?

A. Yes, sir.

Q. Or else the reservation must be made in the name of the contractor?

A. Yes, sir.

Q. When was that change made?

A. Well, as I said, I could not give the date. I was trying to recollect. I could not say whether it was in the summer or not. My impression is that it was in the early part of the summer.

Q. Last summer?

A. Yes, sir.

Q. How with regard to patenting up these lands that were reserved on contracts after the contracts had matured? State when your attention was first called to that. When had you this talk with the Commissioner that you mentioned?

Hosted by Google

A. I—well, I think I had the first talk with him along in the fall.

Q. Last fall?

A. Yes, sir,—September or October.

Q. What were his instructions to you?

A. He said I must keep watch of it and see that all parties were notified soon enough this spring so that the land could be returned to the different counties as being sold on all the lands that were held on matured scrip.

Q. What were they to be returned to the counties for, this spring?

A. So they could be assessed by the supervisors,—in time for that.

Q. State what you did in pursuance of those instructions.

A. I sent a letter to each contractor,—each person holding lands. I commenced the first day of March. I wrote most of the letters, I think, on the first day of March; some, perhaps a few days after,—it was about that time,—on or about the first of March.

Q. To each person who should patent up matured scrip?

A. Yes, sir.

Q. What directions did you give them in those letters?

A. I called their attention to the fact that they had matured scrip there and the lands reserved on it, and, if they wished to give any directions in regard to patents, to forward those directions.

Q. State whether you called their attention to the law in that regard.

A. Yes, sir.

Q. What law was it, Mr. Gillam?

A. I could not cite you to the particular act,—the law for that very purpose, requiring lands to be patented on completion of contracts.

Q. Were those letters copied?

A. Yes, sir; they are on file.

Hosted by Google

Q. Now, sir, what was the condition of this "Reserve-book" when you came into the office in January, 1871.

A. When I commenced to work on the book, there had been noone that had given especial attention to it, as I understood, for some little time; how long I could not say.

Q. Were the accounts all up?

A. No, sir. There were a great many applications in the boxes filed away, that had not yet been entered.

Q. At the time that you took charge of the book, had any account been settled or balanced?

A. Not to my knowledge.

Q. Not any?

A. Perhaps some old contracts were paid up; a few were settled up.

Q. Did they appear as balanced upon this book?

A. I think not. I don't recollect of any balance being struck on the book. I don't think there was any entries to that effect. That is my recollection now.

Q. You say it has been your business, since you have been in the office, to have charge of that book?

A. Yes, sir.

Q. Look after those contracts?

A. Yes, sir.

Q. You speak of contracts which had matured previous to March, 1871, where patents had not been issued. Why hadn't they?

A. Well, as I said, I think you will find in looking them up that there is some conflict,—there is something back of it somewhere. In these contracts that are lying back,—that is, the lands are lying,—the lands are not patented, and the scrip has been matured some time. I know there are some such instances at least where there are conflicting claims; many times two or three parties apply for the same land, all claim it.

Q. Do you understand whether the applicant has any choice with regard to the lands being patented up to him after his scrip has matured,—contracts, I should have said?

Hosted by Google

A. Well, I understand that the way the ruling of the Supreme Court was: If a man has been allowed to patent lands promiscuously, and make his own selection, he can continue so, and that—

Mr. Manager Grosvenor—I do not want him to state the decision of the Supreme Court.

The Witness—Well, that has been the practice of the office —has been where a man has been allowed to make his own selection, he continues so.

Mr. Manager Grosvenor—We do not object to his stating the rules of the office, but the decisions of the Supreme Court and the statutes we prefer to read from the books.

Mr. Shipman—We intend to confine it to that.

By Mr. McGowan:

Q. What were the facts in reference to Obed Smith's contract?

A. Well, he was some over-reserved when I first figured up his contract,—first looked it up.

Q, When was that, do you remember?

A. Well, it was about the first of July, or the latter part of June.

Q. Will you refresh your recollection from that? [Showing witness a paper.]

A. Well, I recollect looking—these are my figures. I made this up at this time.

Q. What is that date?

A. This is November 17th.

Q. Let me ask you with reference to his account at that time, November 17th.

A. Just let me look at that paper again. [Paper again shown witness.]

Q. Will you state whether he was overdrawn any on his contracts, November 17th, as appeared by the books?

A. Yes, sir, he was.

Mr. Manager Grosvenor—Well, the books will show it now if it was; let him refer to the books and see whether that is so.

Hosted by Google

Mr. McGowan—I suppose he can state it from his recollection.

Mr. Manager Huston—The book is better evidence.

By Mr. McGowan:

Question—First, I want to get at the special matters on this reservation of Obed Smith's. Do I understand you to say that Mr. Hewitt had reserved on the order from Bathay, 8,000 acres of land?

Answer—My recollection is that it is about 8,000 acres—the full amount that he reserved on the order.

Q. At the time the assignment was made from Bathay to Smith, had any part of that 8,000 acres been patented up by Hewitt?

A. Well, I could not say.

Q. [Showing witness a paper.] Use that, if you choose to refresh your recollection.

A. This is Nov. 17.

Q. Let me put another question first—whether, at the time the order was made—the assignment was made from Bathay to Smith—whether Hewitt had then reserved on the books and unpatented, 8,000 acres of land?

A. I could not say that day what the amount was. I could not tell without looking it up.

Q. What was the amount of his reservation November 17?

A. 3.946 13-100ths acres at that time.

Q. That was Nov. 17, of what year, Mr. Gillam?

A. That was Nov. 17, 1871, of last fall.

Q. You stated that the assignment from Bathay to Smith was made Sept. 13, 1871?

A. September 13; yes, sir.

Q. Now, can you state from memory, or from the book?

A. I would like to make one correction; I think it is about $8,000 worth of land instead of 8,000 acres. I can tell exactly by looking it up. I stated on my direct examination that there was about 8,000 acres, at a rough guess. I guess it would be nearer $8,000 worth, or 6,000 acres, than 8,000.

Hosted by Google

Q. Now, I will ask if you can state from recollection whether there was any land that Hewitt had reserved on the Bathay contract that was patented at the time Bathay made the assignment to Smith ?

A. That I could not tell without referring to the lands that have been patented, and see what date they were patented. There is nothing on this book to tell when they were patented. They are simply marked patented where they have been.

Q. Do you know of a reservation made on the Bathay contract in favor of Preston ?

A. Yes, sir. I know of an order, at least, given by Bathay to Preston.

Q. For how much ?

A. For 8,000 acres.

Q. Have you the date of the order there ?

A. Yes, sir. The date of the order is June 25, 1868.

Q. State whether there was anything due Mr. Preston on that order, November 17 ?

A. There was.

Q. How much ?

A. $1,788, according to the books.

Q. Mr. Gillam, have you any knowledge of any reservation made by Mr. Bathay at the time he made and assigned the contract to Smith ?

A. Yes, sir.

Q. How much did he reserve on the original contract?

A. Well, it was quite a large amount.

Q. Have you got the exact amount on your record?

A. No. I could not, from the record, give you the exact amount that was reserved at that date. There had been some 16,000 acres reserved by Bathay and by others on his order; a great many of them have been patented up.

Q. Will you state, Mr. Gillam, how much there was due Mr. Bathay on the reservation on the contract which he had assigned to Smith, November 17th.

Hosted by Google

A. There was 7,173 69-100th acres, that was reserved to Bathay November 17th, 1871.

Q. Was there anything still due Bathay on the reservation that was made between him and Smith at the time he made the assignment?

A. Yes, sir. Bathay was to receive a thousand dollars of matured scrip.

Q. According to the terms of that contract?

A. According to the terms of the assignment.

Q. That was charged up to Smith in the settlement?

A. Yes, sir, that was charged over to Smith.

Mr. Ball—I did not understand the witness.

The Witness—I said that Smith was to give Bathay a thousand dollars of matured scrip, which he had paid him for the assignment of the contract, at the time the contract was assigned.

Q. Will you state, Mr. Gillam, what there was due to Mr. Smith, on the Bathay contract, November 17th?

A. We made a balance of $55.23.

Q. Due him at that time?

A. Yes, sir.

Q. The counsel has asked you about reloading contracts. Will you state whether lands are reserved on two different contracts at the same time?

A. Well, there has been such a practice with us. I found that, for instance, in the case of Obed Smith; he had, I think, five contracts on the Duncan, Alpena, and Sauble road, and his lands were reserved previously on the contracts. He gave orders to reserve lands on his contract, and the lands were all marked up together, and his credit all figured together.

Q. Was that what you meant by "loading contracts," or what you understood?

A. No, sir. What I understood, Mr. Huston, that parties would reserve lands, and then patent them up perhaps on other scrip; that would relieve the contract, and then reserve again on the same contract.

Hosted by Google

Q. Now, Mr. Gillam, I want to ask you with reference to that, whether there was two sets of land reserved on one contract at the same time?

A. No, sir. A man never was allowed to reserve unless he had credit.

Q. More than the amount of the contract?

A. No, sir.

Q. Then if the lands were patented which had been reserved on that contract, it left that amount of land to reserve again?

A. Yes, sir.

Q. And the practice, then, was to allow contractors to reserve?

A. Yes, sir; in figuring up, I simply figure up the balance due them, if anything, on the contract of unmatured scrip.

Q. Is there any discrimination made in the record in favor of Hewitt or Hall?

A. No, sir; all figured alike.

Q. You say the contracts are filed in the office of the Road Commissioner?

A. Yes, sir.

Q. Are the assignments also?

A. They are, usually. I do not know but they are always. The road commissioner keeps track of the contractors, to know who they are.

Q. Was there an understanding between Hewitt and Smith after the assignment was made to Smith, whereby Smith accepted the reservations already made by Hewitt on the Bathy contract?

Mr. Manager Cochrane—Is not that going a little beyond any line that either party has followed heretofore,—asking what the understanding was between parties, not the witness or parties in the office? So far as Smith is concerned, he is here and can be asked that question.

Mr. McGowan—I only ask for the personal knowledge or understanding of the witness, and it is with reference to a

Hosted by Google

matter that has been gone into quite fully on the examination of this witness with regard to the reservations of Hewitt on the Bathay contract, either before or after it was assigned to Mr. Smith. You will remember that the question came up whether he had really reserved any after the assignment was made, but, on the examination of the assignment, it was found it was not filed in the office until after that reservation was made; and I think, also, when Smith was on the witness stand, he complained that favors had been shown Hewitt, in allowing him to reserve upon his contract, and that the difference between him and the Commissioner partly grew out of the reservation made by Hewitt. Now, if Mr. Hewitt and Mr. Smith had an understanding, whereby Mr. Smith accepted the arrangement, or agreed to the arrangement, which had been made between Bathay and Hewitt previous, of course the Commissioner was justified in charging Mr. Smith with the amount of reservations which Hewitt had made. If the witness had personal knowledge of this understanding, I think it would be very proper to introduce it here.

Mr. Manager Cochrane—When the witness was asked, on hi direct examination, as to this matter, I think he answered as to facts within his personal knowledge,—or made a statement of facts as they appear on the records themselves.

Now, the question is, what is the understanding between these parties? He might have some vague idea of an understanding, but after all he might have no knowledge thereof. If he heard a conversation between Smith and Hewitt, or if there was any course of dealing between them, which actually showed an understanding, let him state that conversation or describe that course of dealing. That would be an exhibition of facts from which the Court might draw the conclusion that there was some understanding and what that understanding was; but to ask him whether there was any understanding with regard to this, without showing any of these facts, it seems to me is going far beyond the lines that either party has

Hosted by Google

gone heretofore, and we must admit on both sides that we have used a great deal of latitude in our examinations.

Mr. Shipman—We only ask for personal knowledge.

The Presiding Officer—I understand the Honorable Manager to make no objection to the witness stating facts with regard to that transaction.

Mr. McGowan—I will frame my question so as to avoid any objection on that ground.

Q. Have you any personal knowledge of any conversation between Mr. Smith and Mr. Hewitt, with reference to the assignment of the Bathay contract?

A. No, sir.

Q. Have you any personal knowledge of any arrangemeut between them about it, or about reservations?

A. Nothing but what the papers show about the assignment, —whatever information it carries.

Q. I would like to have you turn to the contract number 27, —Mr. Hull's. State when it matured?

A. The date of the maturity I have not got. I think it would be in November or December last.

Q. Can you give the date of the contract number 28, when the scrip matured?

A. It matured a little later, I think in December, though,—somewhere between the 1st of October and the 1st of January, at least.

Q. Were these accounts of Mr. Hall's kept separate?

A. They never had been, strictly.

Q. Were they in the same condition that Obed Smith's were?

A. Yes, sir.

Q. Reservations made on any or all of them?

A. Yes, sir.

Q. The general orders?

A. Yes, sir.

Q. Had Mr. Hall given orders for other parties to reserve for him?

A. I think not.

Hosted by Google

Q. Had he given any orders for any parties to reserve land in their own name?

A. I think he gave no orders unless it was to reserve in his own name, strictly. That is my recollection.

Q. Gave no orders carrying the matured scrip?

A. No. sir.

RE-EXAMINATION OF G. F. GILLAM.

Re-examined by Mr. Manager Huston:

Question. I wish to call your attention to the Bathay contract, to the time that you made up the statement that your attention has been called to. I ask you if you did not make a different result afterwards, in regard to Mr. Smith's credits.

Answer. Yes, sir.

Q. How was that?

A. It appeared afterwards that the $1,788 that was due D, Preston & Co. was only an appearance on the books, and was not actually a fact. The books showed there was that due him, but it turned out there was not anything afterwards;—at least he gave a receipt in full.

Q. Was it not understood in the office, at the same time, that the order that Mr. Hewitt had from Mr. Bathay did not carry the scrip with it?

A. That it did not carry matured scrip.

Q. In the final account was it not also taken from Mr. Smith's statement?

A. No, sir.

Q. It was charged up against him in the final account?

A. Yes, sir.

Q. In your final statement that you delivered to Mr. Smith, did you not ascertain this to be the fact, that he had sufficient unmatured scrip to cover all the lands that he had reserved?

A. Yes, sir.

Mr. Manager Cochrane:

Question. You stated to me that the reason why patents had not been issued on this matured scrip was, generally, be-

Hosted by Google

cause there were disputes as to the title of the land, did you not?

Answer. I stated there were some, at least, in that condition. There may be some without those reservations.

Q. Have you any idea what proportion there is that is disputed?

A. No, sir, I could not tell you anything about it, without looking it up.

Q. Do you know whether the basis of that dispute appears upon any records in the office, or how the conflicting claims arise?

A. There may be something to show in the office, and there may not be, fully. That I could not say.

Q. You cannot say anything about it?

A. No, I could not.

Q. Then you really do not know anything about the reason —that is, of your own personal knowledge—why these lands are not patented?

A. No, sir; I could not give any positive information.

Q. Any further than that is the reason?

A. Yes, sir.

RE-CROSS-EXAMINATION OF G. F. GILLAM.

Examined by Mr. McGowan:

Question. You say you credited back to Smith the amount you had charged him, as being still unpaid on the Preston order?

Answer. Yes, sir.

Q. There was an order from Mr. Bathay to Mr. Preston, which had not been reserved in full?

A. Yes, sir.

Q. State whether there was any communication with Mr Preston concerning that order?

A. Yes, sir; Mr. Preston was written to, to ascertain how it stood, and he wrote back that there was nothing due, that he had been paid in full.

Hosted by Google

Q. Did you see the letter?

A. I did.

Q. Did he state in that letter, that Mr. Bathay had once assigned to him or given him an order on the contract?

A. I could not say. He has an order on file in the office, from Bathay.

Q. You may refresh your recollection, if you choose. [Showing witness a letter].

A. That is the letter we received from Preston & Co., in relation to it.

Mr. McGowan—I propose to offer that in evidence, as a part of the cross-examination, at this point.

[Admitted in evidence.]

[EXHIBIT CC.]

BANKING HOUSE OF DAVID PRESTON & CO.,
Detroit, Dec. 5, 1871.

Hon. C. A. Edmonds, Commissioner State Land Office, Lansiny Mich.:

DEAR SIR—Your letter of the 2d inst. is received, in which you say:

"I have this day received an order from Obed Smith, Esq., in favor of Wm. B. McCreery, for 1,200 acres upon contract No. 4, of the Midland, Houghton Lake, and Traverse City State road. Mr. Smith states that Mr. Preston says he has no claim on the contract, as he has settled with Mr. Bathay. Will you please inform this office, at your earliest convenience, as to the facts in the case?"

Mr. Bathay does not owe us anything on any contract. He once assigned his contract, or a portion of it, to us; but we have received in lands, and in credits at your office, all that he owes us.

Yours truly,

DAVID PRESTON & CO.

Indorsed on the back, as follows:

"David Preston & Co., Dec. 5, 1871.

"Received at State Land Office, Lansing, Mich., Dec. 6, 1871."

Hosted by Google

Q. Look on that paper and state what it is.

A. It is an order for Theodore Bathay to D. Preston & Co., for 8,000 acres of land.

Q. When is it dated?

A. June 25th, 1868.

Q. Is that the order on which there was $1,788 worth still unreserved, at the time of the statement?

A. Yes, sir, that is the order.

Mr. McGowan—I propose now to offer in evidence, the order, as a part of the cross-examination, that we may fully understand the state of the affair.

[Admitted in evidence.]

[EXHIBIT DD.]

BANKING HOUSE OF DAVID PRESTON & CO.,
Detroit, June 25, 1868.

The Hon. E. H. Porter, Deputy Commissioner State Land Office, Lansing, Michigan:

I have to-day sold and assigned to David Preston, of Detroit, eight thousand acres, say $10,000 of general scrip, on my contract on Midland, Houghton Lake & Grand Traverse State road, of 28 miles, executed May 23, 1868. The first amount completed thereon. You will therefore please allow them to reserve 8,000 acres of general scrip on said contract,

And oblige,

THEODORE BATHAY.

Indorsed on the back as follows:

"Theodore Bathay's order to D. Preston, for 8,000 acres of land, June 25, 1868."

Q. I will call your attention to contract No. 128, and ask you whether any reservations were made on the contract after it had matured?

A. That was spoken of on the direct examination, and I stated that the last reserve was Dec. 4, of one forty, and I think the last warrant was at a later date.

Hosted by Google

Q. Do you know whether the reservation was made previous to the warrant,—previous to its maturing?

A. I cannot say.

RE-EXAMINATION OF G. F. GILLAM.

Examined by Mr. Manager Huston:

Question. Do you remember the fact of some of Mr Smith's reservation having been applied for by Ripley? Have you made up the statement?

Answer. Yes, sir.

Q. Do you know who made and handed in the list for Ripley?

A. It was mailed by him from Saginaw.

Q. Do you know who furnished him the evidence?

A. I told him, for one. I don't think he could have got them of any one else at that time. There did not any one else know it.

Q. Who made the list of the application for Hall?

A. I cannot tell you.

Q. Was Mr. Hall present?

A. I cannot tell you.

Q. Was it made by Potter?

A. I think it was.

Q. Do you know who furnished the list to Mr. Potter?

A. I do not.

Q. Whether Mr. Barnard furnished it?

A. I cannot say.

CROSS-EXAMINATION OF G. F. GILLAM.

Examined by Mr. McGowan:

Question. Mr. Potter has his office in one corner of the Land Office?

Answer. Yes sir.

Q. Has he access to these books?

A. Yes, sir, when he chooses to have.

Q. He had access to that book there?

A. Yes, sir.

Hosted by Google

RE-EXAMINATION OF G. F. GILLAM.

Examined by Mr. Cochrane:

Question. Prior to receiving this letter from Mr. Preston, was there anything in the office to show that Mr. Preston had received payment on the Bathay contract before that acknowledgment?

Answer. No, sir. I looked that matter as thoroughly as I could, with the Commissioner, and all the payments we could find, and we still found a balance due Preston of $1,788.

Q. When Preston said in that letter that he had received full pay on that contract in lands and credits, was there anything at your office to show what those credits were to be applied to when they were placed there in your office, or do you know anything about those credits? In other words, why did you come to make this mistake when these credits existed in the office, if it was a mistake?

A. Without knowing, I can give you one way: The order was for 8,000 acres. It might have been settled up afterwards for the lands, and Mr. Preston might have taken a less amount of Bathay. I cannot account for it in any other way, only that they first took a larger order than they took up.

Q. Then, on the receipt of that letter you settled up with Preston and Bathay.

A. Yes, sir; gave Bathay credit.

TESTIMONY OF WILLIAM M. MARR.

William M. Marr, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Grosvenor:

Question. Where do you reside?

Answer. East Saginaw.

Q. How long have you resided there?

A. I have resided in the city about three years.

Hosted by Google

Q. What is your business or occupation?

A. Well, I have been a land hunter and land agent, and trafficking in pine lands generally.

Q. Have you ever had any business with the Land Office in this city?

A. Yes, some.

Q. Are you acquainted with the clerks in the office.

A. A very little.

Q. Who do you know?

A. I particularly know Mr. Van Dunham, and I know Mr. Barnard when I see him; but I am not acquainted with them enough to know any of the rest of them,—only these two.

Q. If you have paid clerks in that office, or any one of them, money, during the last year and a half, for any services, state the transaction fully, in your own way?

A. I think it was in last September some time that I applied for the west half of the northwest quarter of section 7, in 19, 2, and they told me it had been taken out of market or located by William Bush, I think, or Billy Bush,—something of that kind, to that effect. It was marked Bush on the plat, anyway, and I wanted to locate it, and they told me he had bought it; but they thought—this was Van Dunham told me —he thought he could get that lot for me. I wanted to know what it was going to cost; he said it would not cost any great amount. He wanted to know what it was worth and I told him I would not give but a little more than the Government price for it, but I would like to have it, as it was near some other that I had located; he said he would find out what he could do about it, and write me in a few days; and about a week after that, I got a letter from him, stating that he could buy it, and wanted to know what I would give, and I wrote back that I would give him $150. And then I got another answer from him, that the lot was fractional, and there was 105 acres of it, and that that was but very little more than the Government price, and it would not

Hosted by Google

pay for the minutes to the other party. They had taken it out of market, and I examined the plats in the office at Saginaw, and I saw it was fractional—105 acres, and that would give me so much more timber, and I figured on the matter. I tried to get it as cheap as I could. I considered it worth $1,000, and I answered back I would give $25 more, making $175, and in a few days afterwards I got a reply from him accepting the offer, and I came to Lansing and paid $175, and got the patent in S. H. Webster's name.

Q. You paid it to him?

A. Yes, I paid it to Van Dunham. He was not in the office when I got there, and I waited for him there. I could not get any satisfaction, in regard to the land, from any one else in the office, and I had to wait until Van Dunham came.

Q. Had you an application for the land?

A. I had made an application in the first start in regard to it. I applied for the land, and saw it was marked "William Bush."

Q. You paid the money over to him and had a patent to the person you directed?

A. Yes, sir.

Q. What was his name?

A. S. H. Webster of East Saginaw.

Q. Did you have any talk with Mr. Barnard about it?

A. I did.

Q. When?

A. On the day I got the patent.

Q. State that conversation.

A. I spoke to him about it, when I did not find Mr. Van Dunham in the office. I spoke to Mr. Barnard; he did not seem to know anything at all about it, on the first start, and I explained a little to him about it, and he said he thought Mr. Van Dunham had gone out of town, to see the party that had taken the land out of the market, and that he would be in in time so that I could get out of town the same day again,

Hosted by Google

so I waited for him to come. He told me he had paid for the lands himself; he had taken a duplicate—

Q. Who did?

A. Van Dunham; he said that at the time he got them that the party had got the patent made to some one, and that he had paid for the land himself, and taken a duplicate, and then all he had to do was to order the patent in whosesoever name he saw fit; and the reason I had this conversation with him I had State scrip at the same time that I could have applied on it, if it had been vacant; but in order to get the money in full for the land, he claimed that he had paid for the land himself, so that I could not apply my scrip on it; I had to pay him in money.

Q. What was the exact day?

A. I cannot give the exact date. You can turn to the location and get the exact day.

Q. Do you know whether your patent bears the date that you was there.

A. Yes, it is the same day.

Q. Did you see the Commissioner that day?

A. No, sir. I never saw Mr. Edmonds. I don't know him at all. I never had any conversation with him, or any letters from him. I know nothing about it. I would not know the man if I should see him.

CROSS-EXAMINATION OF WILLIAM M. MARR.

Examined by Mr. McGowan:

Question. When you went into the office after you came to get the land, did you talk with any one else excepting Mr. Barnard?

Answer. I might have had some conversation with some of the rest in regard to the land, but I would not know who the party was if I should see him now. I don't know anyone's name, excepting Barnard.

Q. You said you waited, and did not get any satisfaction,—was all that talk with Mr. Barnard?

A. Yes, sir.

Hosted by Google

Q. You talked with no one about this piece of land excepting Barnard.

A. No, sir; not that day.

Q. Was that all the talk you ever had with Barnard about that land?

A. Yes, sir.

Q. All the other talk was with Van Dunham?

A. Yes, sir.

Q. Van Dunham told you he bought the land of Bush?

A. No, sir; all I know about that I saw it charged on the book.

Q. He said he bought it of the party?

A. Yes, sir. There was no names used at all, but I saw it marked to Bush.

Q. You saw it was marked on the plat to Bush?

A. Yes, sir.

Q. And they said it was reserved by "a party?"

A. Yes, sir.

Q. Van Dunham bought it of a party?

A. Yes, sir.

Q. Have you got that patent with you?

A. No, sir; I have not.

Q. Where is it?

A. Mr. Webster has it?

Q. Who is Mr. Webster?

A. S. H. Webster of East Saginaw; he boards at the "Bancroft."

Mr. McGowan—That is all.

The Presiding Officer—The Court will take a recess until two o'clock this afternoon.

Lansing, Thursday, P. M., May 9, 1872.

The Senate met and was called to order by the President *pro tem.*

The Sergeant-at-Arms made the usual proclamation.

Roll called: quorum present.

Hosted by Google

TESTIMONY OF LESTER S. HUDSON.

Lester S. Hudson, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Grosvenor:

Q. You reside in this city?

A. Yes, sir.

Q. Are you acquainted with Wm. Barnard, Deputy Land Commissioner?

A. Yes, sir.

Q. How long have you known him?

A. About eight years, I believe, sir.

Q. Did you purchase any lands of him during the last year or two?

A. Yes, sir.

Q. When did you buy the first?

A. I do not know.

Q. About the time?

A. About last spring, I think it was,—a year ago now.

Q. How much did you get of him at that time?

A. Eighty acres.

Q. What did you pay him for it?

A. I traded him a horse for it.

Q. What was the land called; what was it estimated at in the trade?

A. A hundred and a half.

Q. What kind of title did you get?

A. Got a State patent.

Q. In your name?

A. Yes, sir.

Q. Who paid the State for that land at the State office?

A. He did, I suppose,—William Barnard.

Q. You did not?

A. No, sir.

Q. Have you got a patent of that land now?

A. No, sir.

Hosted by Google

Q. Who has the patent? Did you deliver the patent to the person you sold the land to?

A. Yes, sir, I did.

Q. Did you buy any other piece of him after that?

A. Yes, sir.

Q. About what time?

A. Last fall, I think,—some time in the fall.

Q. How much, 80 acres?

A. 80 acres, I think.

Q. In whose name did you take the title?

A. In my own name.

Q. Patented to yourself?

A. Yes, sir. He traded me some scrip.

Q. Did he convey to you a piece of land by a patent?

A. No, sir.

Q. He gave you some scrip?

A. Yes, sir.

Q. What did you do with the scrip?

Mr. Shipman—We object. We cannot see that it is material what he did with the scrip. He had a right to buy scrip, I suppose.

Mr. Manager Grosvenor—We do not propose, unless the Senate require it, to indicate just now how we intend to use it. We think the testimony is allowable under the article for dealing in scrip. We propose to follow that up and see what he did with that scrip,—whether he entered land with it in the office, under whose directions, and how, and to see what became of it. We apprehend this is another way of evading the law.

The Presiding Officer—The question may be answered.

Question. Did you enter land with that scrip.

Answer. Yes, sir.

Q. Who showed you the land?

A. Mr. Barnard.

Q. Did you know anything about the land before Barnard told you of it?

Hosted by Google

A. No, sir, I did not.

Q. How much did you call the land in the trade before it was—what was the land called in the second trade?

A. $100.

Q. Did he pay you anything besides that?

A. What for, sir?

Q. Did you make a trade with him? What did you pay him for this land,—a hundred dollars, you said?

A. I traded a colt for it,—a young horse.

Q. Was that the price agreed upon for the colt?

A. Yes, sir, $100.

Q. Was it not the bargain between you and him, in relation to the colt, that he was to give you 80 acres of land?

A. No, sir, it was not?

Q. Was it that he was to give you $100 in scrip?

A. Yes, sir.

Q. And was he to find the land for you to locate the scrip on?

A. Yes, sir.

Q. That was in the bargain?

A. Yes, sir.

Q. This was with Mr. Barnard?

A. Yes, sir.

Q. Do you own that land now?

A. No, sir.

Q. Have you sold it?

A. Yes, sir.

Q. You located the lot right away?

A. Yes, sir.

Q. You did not let Mr. Barnard have it again?

A. No, sir.

Q. Do you know in whose name that land was marked in the office before you entered it?

A. No, sir.

Q. Can you tell the description of the land? What county was it in?

A. It was in Allegan county.

Hosted by Google

Q. The last 80?

A. Yes, sir.

Q. Where was the first 80?

A. Saginaw county.

Q. Do you remember the town?

A. No, sir; I do not.

CROSS-EXAMINATION OF LESTER S. HUDSON.

Cross-examined by Mr. Shipman:

Question. Do you know of whom Mr. Barnard got the piece of land he traded you, that you spoke of?

Answer. No, sir.

Q. Do you know whether he got it of a contractor or not?

A. No, sir; I do not.

Q. You cannot give the description of the land?

A. No, sir.

TESTIMONY OF C. C. DODGE.

C. C. Dodge, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows.

Examined by Mr. Manager Huston:

Question. Where do you reside?

Answer. In this city,—Lansing.

Q. How long have you lived here?

A. Nearly sixteen years.

Q. Are you acquainted with Mr. Edmonds?

A. Very slightly. I have met him a few times, within the last thirty days, that is all.

Q. Did you ever purchase any land at the Land Office?

A. Yes, sir.

Q. When did you make any purchase there?

A. About the 5th day of April last.

Q. What descriptions?

A. It is in town 22 N., 10 W.

Q. Can't you give any further description, except the town?

A Yes, sir, I can give the description of it?

Hosted by Google

Q. Just give us the description.

A. [Refers to memorandum,] E. fractional ½ of the N. E. ¼ of section 14, S. W. of N. E. of 15, N. W. of S. E. of 15, S. E. of the S. E. of 22, N. ½ of the N. E. of 27.

Q. From whom did you get the minutes of that land?

A. The minutes of that I got from a man by the name of Clarke, a clerk in the office.

Q. Harry Clarke?

A. Yes, sir.

Q. Do you know where he got them?

A. I do not.

Q. Did you pay Clark?

A. No, sir; I don't know as he intended I should have them when I got them.

Mr. Shipman—Mr. President: We do not know what they intend to prove here. The time now is located at the 5th of April, which is near the time stated in these articles. If they do not propose to connect it in some way back, it seems to me to be improper.

Mr. Manager Huston—I will not ask him anything more in regard to that at present.

Question. Let me call your attention to town 25 N., 8 W. Have you got a plat of that town?

Answer. Yes, sir. [Witness produces plat.]

Q. That is the plat, is it, of the town I referred to?

A. Yes, sir.

Q. Are there any reservations marked upon the plat?

A. Yes, sir.

Q. To whom?

A. Cyrus Hewitt, E. Hall, and T. Bathay.

Q. Will you read the descriptions that are reserved to Cyrus Hewitt?

A. Well, it will take me some time to count them there. I can read them quicker from the patent; I have it in my pocket.

Hosted by Google

Q. Well, read from the patent, if you have it.

A. [Produces patent and reads.] The N. ½ of the S. E. ¼, and the S. W. fractional ¼ of the S. W. ¼, and the N. E. ¼ of the S. W. ¼ of section 31, N. W. ¼ and S. ½ of the N. E. ¼ of section 32, and the S. E. ¼ of the N. W. ¼ of section 33, in township 25 N., of range 8 W.

Q. When did you get that deed?

A. Got it about half an hour ago.

Q. When did you first apply for these lands?

A. I applied for the other about—

Q. Apply for these lands that you have just read the description of?

A. I think about the 26th of April, that I first applied.

Q. Did you have any talk with Mr. Edmonds in regard to these lands?

A. Yes, sir.

Q. Did you call his attention to these descriptions?

A. Yes, sir.

Q. What did he say about it?

Mr. Shipman—One moment. Mr. President, I would like to ask if this is a matter that arose entirely since—

Mr. Manager Huston—[Interrupting.] No, it is not.

Mr. Shipman—Very well then, we will not object.

Mr. Manager Huston—We expect to show that it was claimed at the office—if I am not wrongly informed—that these lands had been reserved some time before,—long before these proceedings were commenced.

Mr. Shipman—That is all right, if you state so.

Question. Did you say you had a talk with Mr. Edmonds in regard to these lands?

Answer. I did.

Q. Where was that?

A. In his private office.

Q. When was it?

A. Somewhere from the 26th to the 30th of April.

Hosted by Google

Q. Where was it?

A. In his office.

Q. What was the conversation?

A. I went in and asked him if these lands were properly held by other parties,—whether they were subject to be located or not, and he informed me that they were held on the Bathay contract, with an order from Bathay to Hewitt giving him the right to hold these lands on his contract.

Q. Did Mr. Edmonds make any minutes upon your plat?

A. He took the plat and went into the general office to see whether they could be located or not and came back with a small entry on the margin here.

Q. What did you next do towards getting these lands?

A. I applied again and deposited the money.

Q. When was that?

A. Some time last week, I think.

Q. What was you informed then?

A. That they were held by Cyrus Hewitt.

Q. Will you state how you managed to get a patent; it seems you have one?

A. I went to Cyrus Hewitt and got him to give me an order for them.

Q. What did you pay Mr. Hewitt?

A. I gave Mr. Hewitt sixty dollars.

Q. Do you know what those lands are worth?

A. No, sir.

Q. Did you ever see them?

A. No, sir.

Q. Have you had any one inspect them for you?

A. No, sir.

Q. Who gave you the first information in regard to this land.

A. I don't know that any one did. I was in the office one day talking with some of the clerks,—I forget now who. I don't remember which one told me there was a large amount of land held by Cyrus Hewitt, that was good land.

Hosted by Google

Q. Which one of the clerks?

A. I am not positive.

Q. Robinson?

A. No, sir. I forget whether Van Dunham or Clark; he said they could not be got because they belonged to Hewitt; and I took my chances, and tried it on.

Q. What was the amount of money you deposited?

A. $546.

Q. Was that the price of that land per acre.

A. No, sir; that was discounting five per cent off for scrip: I bought scrip of Hewitt when I deposited the money. I left just what it figured up at,—they discounting the scrip the same,—five per cent.

Q. How many acres of this land is there?

A. 453 acres, in the last lot.

Q. What amount of money was it you deposited when you made your second payment there,—the amount of money you deposited with the Commissioner?

A. $540 is what I left with him; it came to a little less than that, but he could not make the change with me, and I told him to leave it as it was.

The Presiding Officer—Was that deposited in money?

A. Yes, sir.

Q. Have you had any one that claimed to know, or that had seen this land, give you an estimate of the value of that?

A. I saw one man that said he had been on a part of these lands.

Q. What did you understand they were worth?

Q. He told me he thought about twelve dollars an acre.

CROSS-EXAMINATION OF C. C. DODGE.

Examined by Mr. McGowan:

Question. You got the lands by getting an order from Mr. Hewitt?

Answer. Yes, sir.

Q. You got the order yesterday or to-day?

Hosted by Google

A. No, sir; I got the order about the 6th, I think, of this month.

Q. You did not have the land patented until to-day?

A. I presume the patent has been lying there, but I stopped at the office to-day, as I was coming up, and they handed it to me.

Q. You deposited the money for 453 acres of land,—$540?

A. Yes, sir.

Q. Do you mean you deposited the money, or scrip?

A. No, sir; I put the money down.

Q. What for?

A. To buy this land.

Q. To purchase scrip, or the land?

A. To buy the land with.

Q. The land was worth how much an acre?

A. Ten shillings.

Q. $540 in money would not pay for it?

A. They discounted five per cent for scrip.

Q. You understood they were dealing in scrip?

A. Yes, sir.

Q. You understood it was to be entered up in scrip?

A. Yes, sir.

Q. You gave them just enough money to pay for it entered up in scrip?

A. Yes, sir.

Q. Was that the understanding between you and Mr. Barnard?

A. I did not have any conversation with Barnard.

Q. Who did you have conversation with?

A. With Robinson.

Q. Was that the conversation with Robinson, that it was to be entered up with scrip.

A. Yes, sir.

Q. You think it was about the 26th of April you had this talk with Edmonds?

A. Yes, I think it was the 26th.

Hosted by Google

Q. Had you had any talk that same day with anybody else in the office?

A. Yes. Mr. Robinson.

Q. Where did you have a conversation with Robinson?

A. At his desk in the office.

Q. The front office?

A. Yes, sir.

Q. Where did you have this talk with Edmonds?

A. In the back, private office.

Q. How long after you had the talk with Robinson did you have any talk with Edmonds?

A. Maybe twenty minutes.

Q. Did you go directly from the front office into the back office?

A. Oh, no; it might have been half an hour. I came to the Lansing House and then went back.

Q. Did you go into the back office from the front?

A. No, sir, I went in at the side door.

Q. Did you get any information from the Commissioner then in addition to what you had of Robinson?

A. No, sir; the statement was the same.

RE-EXAMINATION OF C. C. DODGE.

Examined by Mr. Manager Huston:

Question. Did you call there again after the 26th and have a talk with any parties in the office, the time you got your patent?

Answer. Yes, sir; that was the time I deposited the money.

Q. That was after the 26th?

A. Yes, sir.

Q. Did any one say to you you could not have the lands that day, although you deposited the money?

A. Yes, sir.

Q. Who was that?

A. Mr. Robinson.

Hosted by Google

Q. Did he say that before or after he took your money?

A. I paid him the money on the 26th, and he gave it back to me; he would not have it; and I carried it back and insisted upon leaving it there, the last time.

Q. What reason did he assign the last time?

A. The same as the first. He said the lands were held in Cyrus Hewitt's name, and he could not get them.

Q. This first lot of land that you spoke of,—are they the lands that Mr. Barnard had located?

A. I understood they were. I knew nothing of it at the time.

Q. Mr. Barnard is a land dealer in the town?

A. Yes, sir.

Q. What is his given name?

A. That I cannot tell you.

By Mr. McGowan:

Question. You say you gave the money to Mr. Robinson on the 26th?

Answer. I think it was the 26th.

Q. The same day you talked with Mr. Edmonds?

A. Yes, sir.

Q. When you came back the last time, you gave him the money and insisted on his keeping it?

A. Yes, sir.

Q. And he told you they were Mr. Hewitt's lands, and he could not take the application?

A. Yes, sir.

TESTIMONY OF HENRY C. CLARKE.

Henry C. Clarke, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Huston:

Question. Where do you reside?

Answer. In Lansing.

Hosted by Google

Q. What is your business?

A. Clerk in the State Land Office.

Q. How long have you been a clerk there?

A. Since July last.

Q. Where did you reside before you came to Lansing?

A. Coldwater.

Q. What salary do you have as a clerk?

A. $1,000.

Q. What rate were you paid when you first commenced?

A. $900.

Q. What is your business in the office,—what department do you have charge of?

A. Draughting.

Q. What did you have charge of before you became draughtsman?

A. Waiting on customers.

Q. Since you have been in the office, have you been interested in the purchase of any lands?

A. I have once, indirectly.

Q. Where was the land?

A. In Gratiot county.

Q. When was it?

A. I do not recollect the date.

Q. About how long ago?

A. Last fall.

Q. Can you give us a description of the land?

A. I think it was the S. ½ of the S. E. of 32, 10 N., 1 W.

Q. Who made the application for that piece of land?

A. My father.

Q. Who wrote the application?

A. I did.

Q. Was your father present when it was written?

A. No, sir.

Q. Where was it written?

A. I do not recollect. I think I wrote it in Gratiot county.

Hosted by Google

I think I made the application there. I will not be positive about that.

Q. Whom did you present it to in the office?

A. The Commissioner, I think.

Q. Did you not present it to the Commissioner and he make an indorsement upon it at that time?

A. I think I did.

Q. What amount of money, if any, did you give Mr. Edmonds, at the time you presented the application?

A. $95.

Q. Did you give him $95 in money or on a check?

A. I gave him the money.

Q. Was it not the understanding that you should pay him after you sold the land?

A. No, sir.

Q. What is your father's name?

A. O. B. Clarke.

Q. At the time Mr. Edmonds made this indorsement, you counted him out the $95?

A. I think I did. I will not be positive whether it was at the time he made the indorsement, or very soon after.

Q. How soon after you made the application, or bought your patent, did you sell the land?

A. I never got a patent for it.

Q. You got a certificate then?

A. A certificate was handed to me.

Q. How soon after you got the certificate did you sell the land?

A. I did not get a certificate,—my father got the certificate.

Q. Was your father here?

A. No, sir, he was not; it was handed to me for him.

Q. Did your father ever see the certificate?

A. Yes, sir.

Q. Where?

A. I handed it to him at Coldwater.

Hosted by Google

Q. He assigned it to you?

A. No, sir.

Q. He assigned it to the man you sold the land to?

A. After it was sold.

Q. What interest did your father have in it?

A. Ninety-five dollars.

Q. You got the $95 of your father.

A. Yes, sir.

Q. Did you pay it back to him?

A. Yes, sir.

Q. What did you sell the land for?

A. Two hundred and forty dollars, I think.

Q. Who had the margin, over and above the $95.

A. Mr. Dunham and myself.

Q. Was not that the understanding you had with your father, if you had an opportunity to enter lands, if you could make something out of them, you were to have what you could make?

A. Not exactly; the understanding was, if I knew where he could enter any land, if he could make anything out of it, he would give me what he could make out of it.

Q. Who was this Van Dunham?

A. Draughtsman in the State Land Office.

Q. He had a half interest?

A. Yes, sir.

Q. How did you get track of this piece of land?

A. Went up to look at it.

Q. Van Dunham together with you?

A. Yes, sir.

Q. How long were you gone?

A. I think we went Saturday morning and came back Monday morning,—Monday about noon.

Q. Did you get leave from Mr. Edmonds to go?

A. No, sir; he was not in town.

Q. Where was he?

Hosted by Google

A. I did not know. He was out of the office. I think he was at home. He was absent from the city, anyway.

Q. Did you get permission from Mr. Barnard to leave the office, and be gone a couple of days?

A. I got permission from Mr. Barnard to be absent Saturday.

Q. Did he know where you were going?

A. No, sir.

Q. You did not tell him?

A. No, sir.

Q. Is that the only piece of land you have been interested in, since you have been in the office?

A. Yes, sir.

Q. Did you write a letter to a man by the name of Wing, with regard to a piece of land?

A. I did, sir.

Q. What was your object in writing to him?

A. I do not know what particular object I had. I think, probably, there was an opportunity to make something out of it.

Q. Have you not some ways of making money in the office, outside of your salary?

A. Nothing that can be depended upon.

Q. Do you ever get any money for information?

A. Yes, sir.

Q. What amounts do you get?

A. They vary.

Q. Well?

A. From one dollar to five.

Q. Those are perquisites?

A. They are gratuities.

Q. Do you ever get anything for furnishing minutes? Have you ever sold any minutes of lands?

A. No.

Q. You heard the testimony of Mr. Dodge, did you not, with regard to minutes he got of you?

A. Yes, sir.

Hosted by Google

Q. Where did you obtain those minutes?

A. I heard him say he got some minutes of me. He did *not* get any minutes of me,—he got some descriptions of me.

Q. What are minutes?

A. Minutes are items that lookers write out, in relation to the character of the soil and the nature of the timber on the land they have looked; estimates of how much lumber a piece of land will cut.

Q. Do they not include the descriptions also?

A. The minutes refer to the descriptions.

Q. Then it was the descriptions he got of you, and not the minutes?

A. Yes, sir; I had no minutes.

Q. Where did you procure those descriptions?

A. At the State Land Office.

Q. Did you not get those descriptions, in the first place, from a Mr. Turner?

A. I did not.

Q. Where did you get them in the Land Office?

A. From seeing them on the plat-books, vacant.

Q. Did you have a talk with Mr. Turner about this same land that Mr. Dodge applied for, and he tell you the descriptions before you gave them to Mr. Dodge?

A. I did not.

Q. Did you ever have any talk with Mr. Turner upon that subject?

A. Yes, sir.

Q. What was it?

A. It was subsequent to my conversation with Mr. Dodge.

Q. How long after you talked with Mr. Dodge?

A. Three or four hours.

Q. Do you know Mr. Thomas?

A. I do.

Q. Ever have any talk with him with regard to these descriptions.

A. Yes, sir.

Hosted by Google

Q. When did you have this first conversation with him?

A. I do not remember when it was.

Q. Was it before or after you talked with Mr. Dodge about the descriptions?

A. Three or four days after.

Q. Mr. Dodge is the first man you talked with, with regard to these descriptions?

A. Yes, sir.

Q. What did Mr. Dodge pay you for these descriptions?

A. Nothing. Merely a matter of friendship,—no interest in it whatever.

Q. Did you not get that information from Mr. Thomas that you gave Mr. Dodge?

A. I did not.

Q. Did you get it from memoranda that Mr. Thomas had left there previous to that time?

A. I did not see any memorandum that Mr. Thomas had left there?

Q. From whose memoranda did you get the descriptions?

A. The descriptions were vacant upon the plat books.

Q. Were they reserved?

A. They were not.

Q. Had they ever been reserved?

A. I could not say.

Q. Were they marked as reserved, or anybody's initials upon them?

A. They were not.

Q. Had they been, to your knowledge, reserved prior to that time?

A. I could not say positively whether they had or not.

Q. Do you know, to your best recollection?

A. I do not know whether they had or not.

Q. Do you not know as a matter of fact that they had been reserved by Mr. Hewitt with his initial on it?

A. I did not know that they had been reserved.

Hosted by Google

Q. Did you not understand that to be so?

A. I did not understand anything about it.

Q. How many clerks are there in the office?

A. Fifteen or sixteen.

Q. How many were there when you first went there?

A. About the same number.

Q. What do you know about locating land with scrip when money is sent to the office for the purpose of locating the land?

A. It never has been done since I have been in the office, to my knowledge.

Q. When did you understand the rule was changed, if it was ever changed?

A. I understood the rule was changed since the Commissioner found such had been the practice.

Q. Before E. H. Porter had been discharged?

A. I understood that was the reason Porter was discharged.

Q. That is what you understood,—from whom?

A. Some one in the office; I do not know who.

Q. Up to that time, you understood that if money was sent for land, it had been customary to enter the land with scrip, and keep the money?

A. I understood so when I came here,—shortly after.

Q. You understood that had been the rule up to the time that Mr. Porter was discharged?

A. I have so understood since.

Q. Have you a clerk there that is denominated book-keeper?

A. We have, sir.

Q. Who is that?

A. His name is Paddock.

Q. Do you have any books of account in the office?

A. Yes, sir.

Q. What do you keep in those books?

A. It contains charges against men who buy lands upon quarter payment for actual settlement, and they are credited

Hosted by Google

with the yearly interest, and such portion of the principal as they wish to pay from time to time.

Q. That is the book where you keep the sales of Agricultural lands, etc?

A. No, sir; there is a sales-book besides that. Those are ledgers.

Q. How many of those books have you?

A. A large quantity,—30 or 40.

Q. Does that consume the time of the book-keeper, or are there some other books?

A. There are other books.

Q. What are they?

A. I do not know that I can tell you all his duties. He has a large amount of labor to perform.

Q. What is your rule with regard to fees you receive for plats?

A. They are entered upon a book kept for that purpose, and handed to the Deputy Commissioner.

Q. When you have an application for plats, do you ever get the pay for them, or is the money paid to the Deputy?

A. Since I have been draughtsman I have not.

Q. Before you were draughtsman?

A. They used to hand me the amount of their bill with their application, and I would hand it to the Deputy Commissioner, and hand the application to the draughtsman.

Q. That is always done on the receipt of the money?

A. Always, up to that time.

Q. Have you examined that book to see whether these entries are made right along as the business is done, as the money is received?

A. My impression is that they are in every instance.

Q. The book-keeper is notified?

A. The book in which that account is kept is on the Deputy Commissioner's desk.

Q, Who keeps that book?

A He takes the fees and, marks them down in that book,

Hosted by Google

and puts the fees in an envelope in his drawer and turns them over, at the end of the month, to the Treasurer. The book-keeper has nothing to do with the fees of the plats and field-notes.

Q. That is all kept by the Deputy?

A. That is all kept by the Deputy Commissioner.

Q. Do you know anything about Van Dunham being interested in the purchase of land?

A. I know nothing about it.

Q. Did he ever inform you about being interested in some lands in Tuscola county?

A. I do not think he ever did.

Q. Did you ever talk with him about that homestead land in Tuscola county?

A. I do not know that I did.

By Mr. Manager Cochrane.

Question. Do you perform any other duty than as draughtsman?

Answer. No, sir.

Q. What portion of your time is occupied?

A. I do not know that I can say. Sometimes all the time until after hours,—as the work goes, comes in—more or less,—as the occasion requires it.

Q. When you have a large number of plats, your time is fully occupied?

A. Yes, sir.

Q. How often does it occur that your time is so fully occupied as to drive you with after hours?

A. I do not know that it is very frequently the case.

Q. What portion of the time is occupied by the book-keeper, in his duties?

A. All the time.

Q. Could the book-keeper and the draughtsman perform their duties, as a general thing, within office hours,—one person performing the duties of both?

A. No, sir.

Hosted by Google

Q. Did your father tell you to enter that land, that you did enter, in his name?

A. Yes, sir. He told me if I found any land he would apply for it, or I might apply for it for him.

Q. He gave no directions until you mentioned it to him, and then he directed you to enter it?

A. He directed me to apply for it.

Q. Can not you give us some ideas of the amount of your gratuities, that you have mentioned.

A. I could not, sir.

Q. Ten dollars a week?

A. They do not foot up as heavy as that.

Q. Some weeks do they?

A. No, sir.

Q. Never ten dollars?

A. I do not know but what it may have been the case one week. I could not say as to that.

Q. Are they paid as gratuities, or are they nominal charges for information?

A. They are not charges; they are free-will offerings on the part of the donor.

Q. How came they to be paid to you?

A. I don't know the motive that actuated the party to give it to me.

Q. You presume it was liberality?

A. I presume it was a spirit of thankfulness.

Q. How often do these gratuities come around?

A. Not frequently.

Q. The majority of persons are not possessed with the spirit of liberality?

A. No, sir, they are not.

Q. There is no intention on your part that a gratuity would be acceptable, ever?

A. Never.

Q. What is the largest amount of any gratuity that you ever recollect receiving?

Hosted by Google

A. Ten dollars, I think was the largest amount.

Q. Are these five-dollar fellows frequent?

A. No, sir; I am sorry to say they are not.

Q. What is the smallest amount that is acceptable?

A. Most anything would be acceptable, I have no doubt.

Q. Will your gratuities average. in your opinion, five dollars a week?

A. I could not average them at all. They do not average.

Q. I suppose not, as a matter of fact, from one week with another. But would not that be about a reasonable recompense for your information?

A. I think it would be pretty high.

Q. More than you actually receive?

A. More than I actually receive.

Q. How often do men come to you for information of some kind, upon which you receive occasional gratuities?

A. Well, they used to be quite frequent: it was a matter of everyday occurrence, when I was in my former position,—waiting on customers,—that I was asked for information; but not a matter of everyday occurrence that I received any gratuties therefor.

Q. Did those gratuities come from merely transient persons that came into the office,—those that received information of you only occasionally,—or did they come generally from fixed sources?

A. Transient.

Q. It is not so customary with one man that if you see him coming in, you know he is your man?

A. No, sir.

CROSS-EXAMINATION OF HENRY C. CLARKE.

Cross-examined by Mr. McGowan:

Question. Mr. Clarke, have you more than one book-keeper in the office?

Answer. Yes, sir.

Hosted by Google

Q. How many?

A. Two,—a book-keeper and an assistant.

Q. Is not it the fact that they are frequently employed over regular business hours?

A. Yes, sir.

Q. Now, as to these gratuities, Mr. Clarke, has there been any arrangement between you and parties that you were to be paid the gratuities.

A. No, sir.

Q. Did you ever make any arrangement with parties beforehand that you should be paid for any information.

A. No, sir,

Q. Will you state whether or not Mr. Edmonds had any interest in these gratuities?

A. He did not.

Q. State whether he had any knowledge of them.

A. He had no knowledge of them.

Q. You spoke of a piece of land entered in your father's name. When was the arrangement made with your father?

A. One time when I was home in the summer.

Q. The same summer you came here in June?

A. Yes, sir; came here in July.

Q. State whether you know of Mr. Edmonds' having any knowledge of your going to look after that land?

A. Well, he could not have had any knowledge?

Q. Could not have had any?

A. No, sir.

Q. Whether he had any knowledge or information of the arrangement between you and your father?

A. He did not.

Q. Did Mr. Edmonds have any interest in the land which you purchased, or which was licensed in your father's name?

A. It was purchased in my father's name. He did not.

Q. Did Mr. Edmonds have any interest in that land?

A. He had not, sir.

Hosted by Google

Q. Do you know whether Mr. Edmonds found out this practice in the office of taking gratuities, at any time?

A. Well, I do remember one occurrence.

Q. What did he do, if anything, when he found out you were taking gratuities of others?

A. He forbade it, and I had to refund the money.

Q. Now, of this money that you paid for the land—$95.00—you say you paid that in money, or a draft?

A. Money.

Q. Paid to Mr. Edmonds or Mr. Barnard?

A. I gave it to Mr. Edmonds.

Q. At the time he wrote the indorsement?

A. I don't remember whether I gave it to Edmonds or Barnard.

RE-EXAMINATION OF HENRY C. CLARKE.

Examined by Mr. Cochrane:

Question. Have you taken any gratuities since Mr. Edmonds forbade you?

Answer. No, sir.

Q. When was that?

A. I think it was about two or three weeks ago.

RE-CROSS-EXAMINATION OF HENRY C. CLARKE.

Examined by Mr. McGowan:

Question. Did you testify with regard to gratuities before that committee

Answer. Yes, sir.

Q. It was since your testimony before the committee that Mr Edmonds ascertained you had taken a fee, or gratuity, as you call it?

A. Yes, sir.

Q. It was then that he told you to refund it?

A. Yes, sir.

Hosted by Google

TESTIMONY OF CYRUS HEWITT.

Cyrus Hewitt, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Huston:

Question. Where do you reside?

Answer. In the city of Lansing.

Q. How long have you been here?

A. I came to this city the 12th day of May, 1857.

Q. What is your present business?

A. I am a banker and broker here.

Q. Do you deal any in land?

A. Yes, sir, some.

Q. What kind of lands are you dealing in?

A. Well, most all kinds that there is for sale.

Q. Deal any in State swamp lands?

A. A little; yes, sir.

Q. Did you ever deal any in primary school lands?

A. Yes, sir.

Q. Purchase any from the State?

A. Yes, sir, a few.

Q. What has been your practice when you purchased lands of the State, in regard to paying for the land,—the primary school lands?

A. Well, I pay for them as I agree to.

Q. Well, when you apply for the land, what do you usually do when you make your application?

A. Oh, I generally give my check.

Q. Let me call your attention to the lands on section 16, 32 N., 2 W., and ask you if you ever purchased or applied for any lands upon that section?

A. I think I did; yes, sir.

Q. Do you remember what part of the section you applied for?

A. I don't remember the particular description now.

Hosted by Google

Q. How many acres?

A. I think there were two hundred.

Q. How long ago was it you made your application?

A. Well, it was last summer, some time.

Q. What proportion did you propose to pay for the land at the time you made the application,—full payment or quarter payment?

A. Quarter payment.

Q. How did you pay the quarter payment?

A. In a check.

Q. Gave a check on what?

A. On Cyrus Hewitt & Co.'s bank.

Q. That is your own bank,—a bank that you are interested in?

A. Yes, sir.

Q. And payable to whose order?

A. Well, I don't remember now; I drew checks frequently in different ways,—sometimes my own order and sometimes to the order of the State Treasurer.

Q. Don't you know that in this case it was to your own order?

A. I don't know but it was.

Q. Was it indorsed by yourself?

A. I don't know that it was?

Q. How long were those lands to have been held by the State before a certificate or a patent was issued?

A. Well, the undstanding was at the time, it should be two or three weeks before the party would get around that marked them. The land was not for me—I was acting as agent for another party.

Q. I see in your application, you ask to have them reserved until you can ascertain the name of the party that wanted to buy it.

A. Yes, sir.

Q. Did not you know the name of the party at that time?

A. No, sir, I did not. Mr. Thomas looked up the lands, and

Hosted by Google

he said he was at work for some parties in Pennsylvania, and they wanted the lands.

Q. Somebody in Pennsylvania?

A. Yes, sir.

Q. Well, sir, have you ever heard from these parties in Pennsylvania?

A. Yes, sir, I heard from them, but it was a good while after the transaction took place. I think one of them was was named Thompson.

Q. Then you applied for those lands in the interest of somebody in Pennsylvania?

A. Yes, sir, that is what he told me. I don't know about it, —Thomas done the business.

Q. That is what you understood when you made your application?

A. Yes, sir.

Q. Do you know anything about Mr. Allison having applied for those lands?

A. No, I do not.

Q. Don't know anything about that?

A. No, sir.

Q. Have you been informed at the office that he applied?

A. Since this fracas came up here I have heard of it in business.

Q. Did you hear anything about his having applied on the 30th of April?

A. No, sir; I did not hear anything about that.

Q. Did you ever apply for any school land in township 19 north, 7 west?

A. I don't recollect now particularly about that.

Q. Do you remember a man by the name of John Charlton?

A. Yes, sir, I do. He is a Canadian, I believe.

Q. Now, since I have called your attention to his name, do you remember making an application at the office for some land on section 16, township 29 north, 7 west.

A. I think so.

Hosted by Google

Q. How long ago was that?

A. Well, I don't recollect now.

Q. How did you propose to pay for those lands?

A. Well, to pay for them when I was to take them, holding them in my own name until he brought around the money to me. I was not going to run the risk, you know.

Q. Where did you see John Charlton?

A. I think he came here with Mr. Thomas.

Q. You saw him, and made a contract with him?

A. Not particularly with him,—with Thomas.

Q. You made a contract with Mr. Thomas?

A. Yes, sir, mostly.

Q. Who is this Mr. Thomas,—a land-looker?

A. I think he is,—yes, sir.

Q. Mr. Thomas has been in the practice of looking land, has he not?

A. Yes, sir.

Q. For you?

A. Not particularly for me,—some for me.

Q. Did you ever reserve any lands for him on your contracts?

A. No, sir; not particularly for him.

Q. Any swamp land?

A. Well, not particularly.

Q. Who did you for?

A. For parties that he said he had worked for.

Q. Do you remember how long you held those lands upon section 16, in 29 north 17 west?

A. I think it was not a great while,—not over a month or two; I am not certain, though.

Q. Wasn't it in July, and the land was patented the next October?

A. Well, it might be. I think it was in the fall.

Q. What did Charlton pay for that land?

A. Well, he paid me for what little trouble I had been to, that's all.

Hosted by Google

Q. Well, how much did you get for your trouble?

A. Well, I got enough to satisfy me; I don't remember just how much it was.

Q, Well, was it $5 or $50, or $100.

A. It may have been a hundred; I am not sure but it was.

Q. You ain't sure but it was $100?

A. I am not sure.

Q. How much did you get for that that you held on section 16, in 29 north, 4 west?

A. I didn't get much for that.

Q. Well, how much; I don't know what you call much?

A. Well, $10 or $12 I guess.

Q. Now, sir, haven't you frequently had lands reserved there and held for you in that way, until you found a chance to sell the lands?

A. No, sir; that is all.

Q. That never has been done?

A. No, sir.

Q. How is it in those other cases you have just referred to?

A. Well, it was understood they were to take them; I didn't take them hap-hazard, supposing I was going to sell them.

Q. Haven't you had any other transactions of the same kind.

A. No, sir.

Q. Let me call your attention to section 16, of township 19 north, 15 west, and ask you if you have not purchased land in the same way upon that section?

A. I don't know but I may.

Q. Well, I thought so. How much did you have held on that section, and how long did you have it held?

A. I could not tell anything about that.

Q. Do you know anything about it?

A. No.

Q. Now have'nt you had any other school land held for you in the same way?

A. There may have been some.

Hosted by Google

Q. How much would you say?

A. Well, I guess not a very large quantity.

Q. Haven't you made frequent application during the last year and a half to the office, and deposited your check, and have the lands held for you until the lands were sold, and the certificate, if it was part payment, or the patent, if it was full payment, issued to the purchaser?

A. Not very frequently; no, sir.

Q. Well, what do you mean by not very frequently,—once a week or once a month?

A. Once a month, probably. I don't think it would be more than that.

Q. When you made these applications of once a month, and had lands held in that way until you could sell, was it usually of large amounts,—several descriptions,—or of a single description?

A. It would vary sometimes; it would be larger sometimes, and sometimes less.

Q. Do you not know that within the last year that on one occasion you deposited your check for over one thousand acres of land, and that your check is in the office to-day?

A. No, sir.

Q. Did you not deposit your check for nearly one thousand acres of swamp land, and it is there now?

A. It was done, but my check is not there now.

Q. The books show that it is.

A. It should not be.

Q. How is it settled up?

A. It is transferred to the unmatured contract that I bought —I think of Hall and Green—I think it was.

Q. How long ago did you take up your land?

A. Not many days ago.

Q. Since these proceedings commenced, I suppose?

A. Yes, sir; that was done to relieve Obed Smith.

Q. These lands you once had reserved upon a general order of Obed Smith?

Hosted by Google

A. Yes, sir.

Q. And then you had them held for a time on your individual check?

A. Yes, sir, I guess so.

Q. Had them transferred over, and have them held for you on some unmatured scrip of Hall?

A. Yes, sir.

Q. Did you pay Hall anything for it?

A. Yes, sir.

Q. What did you pay him?

A. What I agreed to.

Q. Have you paid?

A. No, sir.

Q. When did you agree to pay it?

A. I was to pay him so much per cent.

Q. When did you agree to?

A. I agreed to pay it to his agent. I didn't see him.

Q. Mr. Potter?

A. Yes, sir.

Q. When he sold the lands, you agreed to pay?

A. No, sir. I paid so much down, and when he gets the work done I shall pay the balance.

Q. And take up the checks?

A. Yes, sir.

Q. Did you ever buy any Agricultural College lands?

A. A little.

Q. How much do you pay down on those?

A. Mostly all down.

Q. Did you ever buy any and pay a quarter down?

A. I might have done so; but not much, I guess.

Q. Are you holding any Agricultural College lands, for which the certificate has not been issued?

A. No, sir.

Q. No check is deposited for anything of that kind?

A. No, sir.

Hosted by Google

Q. Can you state the amount of swamp lands that you now have reserved?

A. Not exactly. No.

Q. Well, can you approximate?

A. Not far from 3,000 acres, I guess.

Mr. McGowan—Do I understand the witness, that his total reservation is not far from 3,000 acres?

The Presiding Officer—The Chair so understood the witness,—swamp lands.

Q. Do you hold any for any other parties for whom you are agent?

A. Yes, sir, I do.

Q. Who are the parties you hold lands for as agent?

A. There is Mr. Thompson. I am holding some yet for him. Perhaps I might as well state the reason why that lingered along so.

Q. State the reason?

A. Well, he came here last fall, and told me he had met with a big loss by the fire in Chicago; he had got short of funds, and wanted me to help him along until spring,—the first of May,—and I told him I would, and he went away, and the first of May he came down and settled that all up.

Q. How long did you hold that before the Chicago fire?

A. Not over two or three months.

Q. Have the lands been patented yet?

A. No, sir; not all.

Q. You are still holding the lands for Thompson?

A. Yes, sir.

Q. How much?

A. I think about 1,000 acres.

Q. What pay or recompense do you get when you hold lands in that way?

A. Just as we can agree. I get enough to satisfy me by making an honest shilling once in a while.

Q. What did you receive by holding these lands for Thompson?

Hosted by Google

A. We have not settled yet.

Q. Did you hold any lands for Mr. Thompson?

A. No. Thomas hadn't much means to buy lands with of his own. He had a little, not much for him—

Q. What has been your transactions with him?

A. Well, he has looked lands and come in here and said, he wanted them for such parties, and wanted me to help him along with them, and give him a little time to get the parties around.

Q. You have the lands reserved in the office until he gets around and is able to pay for them?

A. Yes, sir; until his men come around.

Q. In this case, where you hold 1,000 acres for Thompson, you are holding them until Thompson comes around with the money for the land and pays you for your trouble?

A. Yes, sir.

Q. If Mr. A comes around and wants to buy this land you hold for Thompson he could not get them?

A. Not unless the Commissioner would let him have them.

Q, Isn't that the object in holding them, so they cannot be sold to any one else?

A. Yes, sir, of course.

Q. Then when you enter into this arrangement—when these different parties come to you and say, I have different parcels of land, but am not able to buy them now, and want you to hold them for them—they do that to keep other parties from purchasing them?

A. Yes, sir.

Q. And the effect of that is to keep the lands out of the market?

A. I don't know that it is. The land has to be sold sooner or later. The State won't be cheated any.

Q. When 1,000 acres is reserved, as this for Mr. Thompson, and held along indefinitely, it has a tendency to prevent their being sold to other parties?

A. I suppose it does.

Hosted by Google

Q. Is there any one else besides Thomas and Thompson that you hold land for in that way?

A. No, sir; not that I am aware of now.

A. Is there any one else that you hold lands for, that you are not holding lands for now?

A. Oh, yes.

Q. Name some of them?

A. There are different parties; I don't remember who they are now.

Q. Name the one that you have held the most for in that way?

A, I think these Pennsylvania folks are the most.

Q. Will you give me the name of that firm?

A. John Patton bought some lands here last spring.

Q. What amount did you hold for him?

A. I did not hold them for him very long. They were lands that were looked up and immediately purchased. They were not held as long as the others.

Q. How long were they held?

A. I don't remember.

Q. Six months?

A. No, sir, I think not.

Q. Three months?

A. I think not.

Q. Is there any one else beside Patton?

A. Not that I am aware of.

Q. You never held land for any one else excepting Thomas, Thompson, and John Patton?

A. And others I don't remember their names now.

Q. How many others?

A. I don't remember; there are a good many. I do an agency business. People write to me to purchase lands for them, they send the money and use it in buying lands, and I have bought them, and my books are full.

Q. You come into the office and have them reserved for you whenever you have a mind to.

Hosted by Google

A. I don't unless I have a right to do so, sir.

Q. That is a matter of opinion?

A. It is not a matter of opinion between you and me.

Q. How long, generally, after you have reserved these lands for these other parties, is it before the lands are patented? What would be the average time they are held?

A. Perhaps a month or two.

Q. Have you not had lands held for you two or three years?

A. Not many.

Q. Have you not had lands held for you two or three years?

A. There may be a few lands laying around that way.

Q. Have you not had a great many descriptions held in that way?

A. No, sir; not a great many.

Q. Can you tell from your book?

A. Yes, sir.

Q. Can you send down and have it brought up?

A. No, sir, I don't think I could. I don't keep any accounts myself,—they are kept in the Land Office.

Q. The book is in the Land Office?

A. Yes, sir.

Q. I wish to call your attention to the S. ½ N. E. ¼ and N. W. ¼ of N. E. ¼ sec. 13,—T. 12 N., 10 W.; and ask you if you ever owned those descriptions; being land now owned by James T. Munroe?

A. No. There was some transactions of that kind,—I took up some land there, and I guess there was no patent issued to me, and I took his certificate; and afterwards his patent came to me, and he wanted me to certify the certificate.

By Mr. McGowan:

Question. Who?

Answer. I don't know who it was, and I assigned it.

Q. Let me call your attention to that Barnard sold, that you was interrogated about before the investigating committee, and ask you whether that was a piece of land you reserved, or not?

Hosted by Google

A. There was a piece mixed up between me and Edmund Hall some way, I don't remember now how, and the certificate was issued in my name, and that I assigned to Munroe.

Q. Isn't it a fact that you never paid anything, in scrip or money, for the lands that I have called your attention to?

A. No, sir, I think I paid for them.

Q. You paid for that in Saginaw?

A. Yes, sir, I guess I paid for them, and then the money was paid back to me, but I am not certain.

By Mr. Manager Grosvenor:

Question. Have you not lands reserved on the Bathay contract now?

Answer. Yes, sir.

Q. What amount?

A. I guess nearly to the amount I had.

Q. You now hold them under that reservation?

A. Yes, sir.

Q. What amount of lands have you had reserved on that in all?

A. I should think it was well on towards 4,000 acres.

Q. About 4,000?

A. Yes, sir.

Q. What was the full amount of the contract?

A. I don't remember the full amount.

Q. Are those lands held for yourself?

A. Some of them.

Q. For whom are the others held?

A. I don't remember who the parties are.

Q. This is the contract that is assigned to Mr. Smith, is'nt it?

A. Yes, sir.

Q. When did you make those reservations?

A. Some time last fall, I guess.

Q. Have you not made any this last winter or spring?

A. Yes, sir, some.

Q. Any considerable amount?

A. No, not any very large amount.

Hosted by Google

Q. You still have that order on Bathay?

A. Yes, sir.

Q. Uncanceled?

A. Yes, sir.

Q. You are using it whenever you desire?

A. No, sir. I don't use it any more, for Smith says he has not got any more room in it to hold any more. He has used it up.

Q. Is it overloaded?

A. Yes, sir.

Mr. Manager Huston:

Question. I want to call your attention to this order here. I believe it is part of the description I read. It is an order from Edmund Hall to the Commissioner of the Land Office.

Answer. That is so, according to that letter.

Q. Did you pay Mr. Hall for this?

A. Yes. He and I made the trade.

Q. What was the trade?

A. I don't remember now; he has had land mixed in where mine was, and we have traded.

Q. You and Mr. Hall made a trade and you applied to Mr. Potter and got him to draw this order?

A. I think so.

Q. You are certain of that?

A. No, sir.

Q. You will not swear that you applied to him?

A. No, sir.

Q. Then you don't know whether you paid for this land to the State or not, that was sold to Mr. Munroe, or whether it was applied on Mr. Hall's scrip?

A. No, sir.

Q. You just said, in answer to the Colonel, that you had reserved land this spring, but not much. Can you state somewhere near the amount that you have reserved?

A. It would be less than a thousand acres.

Hosted by Google

Q. Was that during the spring or winter?

A. I think it was in the winter.

Q. For whom did you reserve those.

A. Some for a man named Elsemore?

Q. Where does he live?

A. Saginaw.

Q. They were reserved on the Bathay contract?

A. They were,—they are not now.

Q. At the time you reserved them in the winter?

A. Yes, sir.

Examined by Mr. Manager Grosvenor:

Question. I noticed you used an expression which I do not understand,—which may be familiar to you. You speak of "assigning certificate." What do you mean by that?

Answer. I will tell you. A certificate for land may be issued and a man may hold it as long as he has a mind to. If he is satisfied with it, without getting a patent, that certificate may be assigned. We have blank certificates that we assign. We assign that certificate to a party in blank, and it passes from one to another; they trade it for horses, and all such things; but the last man that has it, when he wants to get a patent, takes it to the office and has the name of the man to whom it is assigned put in, and gets a patent.

Q. Is the person to whom the certificate is originally given or the assignee, obliged to take the land? Is it considered a sale in the office?

A. I believe it is.

Q. There are some advantages, then, in having a certificate over having a patent?

A. It saves a little cost in making out the deed.

Q. Does it not save some taxes?

A. No, sir. It is taxable, because the Commissioner of the Land Office sends out to the county treasurer all the lands sold on the books, whether on certificate or patent.

Q. These lands must be paid for before the certificate issues?

A. Certainly.

Hosted by Google

Q. Can you tell me how it was that in 1870 you had a certificate canceled for 2,180 acres of land which you had a certificate for. I would like to have you explain it in connection with that, so that I can understand it.

A. When was that done?

Q. That was done in April, 1870. Can you explain it?

A. That was done by the action of the Commissioner of the Land Office at that time. It must have been a mistake.

Q. I want to know whether there is any kink by which a sale can be canceled and lands revert to the State, and you get the money back?

A. No, sir; unless it is done by a mistake. The Commissioner of the Land Office has a right to cancel certificates issued by mistake. That is the only reason.

Q. Do you remember that transaction?

A. I do not.

Q. Do you not remember taking a certificate for 2,180 acres in town 12 N., 6 E.?

A. Yes, sir; I remember now.

Q. Can you explain that so that I can understand it?

A. It was entered by mistake. I did not order the land.

Q. You had the certificate?

A. I had.

Q. But had not paid for the land?

A. Yes, sir, paid for the land. They paid me back the scrip.

Q. How did you trade back?

A. They took the land back, and gave me back the scrip.

Q. Can you explain what that mistake was, or how it could occur?

A. It was no mistake of mine. I did not order the land, and did not want it, and did not have it.

Q. You had made the selection of the land?

A. No.

Q. You had made the application for the land?

A. I think this Allison had something to do with it.

Hosted by Google

Q, Had you not made an application for the land, and deposited scrip for it?

A. It was made by mistake.

Q. You had made the application and deposited the scrip?

A. Yes, sir.

Q. You carried the certificates, did you not?

A. I had the certificates.

Q. You carried them from January, 1869, to April, 1870 when they were canceled?

A. Yes, sir.

Q. How came you to take those certificates, if they were made up by mistake?

A. There were a good many things done at that time, and I did not discover it until after that a long time. I don't know how much it was.

The Presiding Officer—How far is this proceeding to go in 1870?

Mr. Manager Grosvenor—We think we will be able to connect it with the present administration. We hope to. We do not like to tell how.

Mr. Shipman—We hope you will not. If they connect it we have nothing to say. We would like to know how.

Mr. Manager Grosvenor—We ask the indulgence of the Senate to present the testimony. Though it may seem to be disconnected, we have to concentrate the testimony, coming as it does from different quarters. Sometimes when we think we are on the track, we find ourselves switched off, particularly when certain parties know in what direction our testimony is drifting.

The Presiding Officer—The Manager will proceed.

Question. Can you tell why it was you asked to have those patents canceled?

Answered. I do not know.

Q. Was it not because there had been a very heavy tax upon the land, including ditch taxes, and they had been returned

Hosted by Google

for those taxes; was it not to get rid of that tax that you asked to have them canceled, and get your money?

A. No, sir; no such thing.

Q. Was it not true that these lands was heavily taxed?

A. I did not know that they were taxed at all.

Q. I will ask you whether you had any talk with Edmonds about that?

A. No, sir.

Q. Did you not have any talk with Edmonds, in March 1871.

A. Not that I know of.

Q. Or during the regular session of the Legislature of 1871?

A. No, sir; I don't remember ever saying a word to him about it.

Q. Or with any of his clerks in his office?

A. No, sir.

Q. Can you not remember now any reason why you wanted those sales canceled?

A. No such reason as that.

Q. I have been trying to refresh your memory; now see if you can find a reason?

A. I do not remember now.

Q. It is so trifling a matter, you cannot remember?

A. I know it was not an account of any taxes.

Q. You got rid of 2,181 acres of land, and got your money back?

A. Yes, sir.

Q. After it had been in the hands of the State a year or more?

A. Yes.

Q. Now, can you not remember so trifling an occurrence as that,—the cause of it?

A. No, sir.

Q. Did you pay that money over by mistake?

A. It must have been or I would not have done it.

Hosted by Google

Q. I will ask you whether you have carried any certificates since?

A. I have certificates,

Q. Of that same character?

A. No.

Q. How do they vary from this?

A. They are the same kind of certificates, of course.

Q. What amount?

A. I do not know,—five or six hundred acres, I should think.

Q. By whom issued?

A. Some are issued under former administrations, and some of this administration.

Q. Why did you not take patents for them?

A. I do not want to.

Q. Why?

A. Because it is handier to take a certificate than take a deed; you do not have to go and get your wife to sign a deed. You can pass them from one to another easier.

Q. Cannot you turn them back to the State better?

A. No, sir; I do not know that I can.

Q, I ask you whether it has not been your practice to cover lands for other people, in the manner you have stated, to the knowledge of Mr. Robinson, your son-in-law?

A. No, sir, not a bit of it?

Q. He has not had any knowledge of your practice in that regard?

A. No, sir.

Q. How long have you been acquainted with him?

A. About two years, I guess.

Q. Have not many of these transactions with the office been through him as a clerk?

A. Yes, sir. I have frequently had letters come to me, and it may have been I handed them to him and told him to look them up; told him to see how they are and give me the answers, and I answered my correspondence. That is the way I do that. It is easier for me than to be looking after them myself.

Hosted by Google

Q, You have reserved some land for Mr. Thomas at his request?

A. Yes, sir.

Q. Within the last year and a half or two years?

A. Yes, sir.

Q. And he has paid you something for that, has n't he?

A. Yes, sir.

Q. Did n't he pay you something a day or two ago for reserving?

A. Yes, sir.

Q. Three or four "forties."

A. Yes, sir.

Q. Do you remember how much?

A. I stated that to Mr. Huston,—ten or twelve dollars I guess.

Q. That was one case. I did n't understand that that applied to Mr. Thomas. Had n't Mr. Thomas paid you before that?

A. Oh, it was some time ago.

Q. Well, during the last year?

A. Oh, yes, sir; he has paid me some.

Q. How much has Mr. Thomas paid you for holding lands in that way for him during the year 1871 and up to now?

A.. I could not say.

Q. $100?

A. It ain't been a very large amount.

Q. Can you make an estimate that would approximate?

A. Maybe $100 and maybe $200.

Q. Now, did n't you deposit your check there for him for $200 last July.

A. Yes, sir.

Q. And it remained here until this trial began?

A. Yes, sir.

Q. Now, what did he pay you for the use of that money?

A. Well, that is what I just stated,—a small amount.

Hosted by Google

Q. That is the same thing?

A. Yes, sir.

Q. On whose contract did you hold it?

A. That was school land.

Q. That is reserved by the check?

A. By the check; yes, sir.

Q. Have you done much of that kind of business?

A. A little; yes, sir.

Q. With checks?

A. Yes, sir.

Q. What amount of checks are in that office now,—your checks?

A. I don't know; I guess not much.

Q. How?

A. Not a great deal, I guess.

Q. When did you take them up?

A. Well, I have taken them up along as I got to them.

Q. Haven't you taken up quite an amount since this trial began?

A. Well, I took up one or two,—yes.

Q. Have n't you taken up one of $1,000?

A. Yes, sir.

Q. When did you take that up?

A. Well, that was fixed up yesterday or to-day.

Q. How came you to fix it up yesterday or to-day?

A. Well, I thought it was better to do it.

Q. At whose request did you do that?

A. At my own.

Q. Your own?

A. Yes, sir.

Q. What became of the lands?

A. Oh, the land is all right?

Q. Who got the lands?

A. They are mine,—I keep them yet.

Q. You have got them reserved now again, have n't you?

A. Yes, sir.

Hosted by Google

Q. In another form?

A. Yes, sir.

Q. Took your check out?

A. Yes, sir.

Q. Whose contract are they under now?

A. Mr. Hall and Upton.

Q. Have you got a right to use that?

A. Yes, sir.

Q. Assigned to you?

A. No, I have not; but through their agent.

Q. Who is their agent?

A. Mr. Potter.

Q. When did you get permission?

A. Yesterday,—or to day, I guess.

Q. Got it to-day?

A. Yes, sir.

Q. Why didn't you apply to Mr. Hall,—you know him, don't you?

A. Very well.

Q. Know Mr. Hall has been here a couple of days?

A. Not Edmund Hall,—Stephen C. Hall.

Q. It is another Hall?

A. Yes, sir.

Q. Is this Mr. Potter the agent also of this other Hall?

A. I guess he is, somewhat,—yes, sir.

Q. Agent for the Hall family?

A. Yes, sir, it appears so.

Q. Have you ever "covered" any land for Mr. Barnard?

A. No, sir.

Q. Have you ever sold him any of your "covers,"—lands that were "covered" by you?

A. No, I guess not.

Q. Never assigned him any certificate?

A. Never knew any transaction except the Munroe matter. I don't know how that come about hardly.

By Mr. Manager Huston [showing witness a book]:

Hosted by Google

Question. There is that one-half section of 32 N. 5 W.,—school section,—that I did not call your attention to. What do you know about that ?

Mr. Shipman—What is the description ?

Mr. Manager Huston—It is the W. ½ of sec. 16, 32 N. 5 W.

Witness—Well, that is in that Thomas claim,—Charlton. That was not for me or any of my relations.

Q. I called your attention to some in 29 north. Then that is another one-half section that you didn't testify to before ?

A. Not at all, sir.

Q. Now, what did you get? How much did you get for that ?

A. I don't know as I got anything. That was bought right off. It was not held a minute.

Q. You held it by your check ?

A. Not long.

Q. Didn't you, until it was sold to Charlton ?

A. Not more than a day or two, I guess.

Q. Well, how can you tell that ?

A. Well, I can't tell,—well, it was about a month, I guess.

Q. Think it was about a month; was'nt it longer than that ?

A. I guess not.

Q. Can you tell me how long you held that [pointing to description on book],—this is the same that I called your attention to first ?

A. I don't recollect how long.

Q. Do you know who you sold that to ?

A. Well, these parties that Thomas was dealing with.

Q. That Thomas was dealing with ?

A. Yes, sir.

Q. It seems that this was conveyed to Carpenter. Is he one of the men that Thomas is dealing with ?

A. Oh, that is that "forty" ? Oh yes, I remember now, that is the "forty" that Mr. Briggs got,—the balance of the section.

Q. How much did you get for that "forty ?"

A. I didn't get anything.

Hosted by Google

Q. Didn't get anything,—didn't make anything on that?

A. No, sir, not a cent. Briggs wanted me to buy it for him.

Mr. Manager Huston—If there is no objection, I would like to have the Court see how this book is kept, and perhaps they will have a better understanding of it.

[The book was here exhibited to the Senators.]

Q. You say you are a banker?

A. Yes, sir.

Q. Is there a firm, William A. Barnard & Co., that do business with you?

A. There is such a name on the books,—yes, sir.

Q. Deposits?

A. Yes, sir.

Q. Who composes the firm of Wm. A. Barnard & Co.

A. The "Co."?

Q. Yes, sir.

A. Well, I don't know as anybody.

Q. You don't know as anybody?

A. No, sir.

Q. Then you are dealing with a firm that you do not know that exists?

A. Well, there is a great many such things; didn't you know it?

The Presiding Officer—The witness will answer the question.

Q. Do you say there is no such firm?

A. It was fixed in that way. I will tell you. I will explain it to you.

Q. Answer my question, if you please. Do you pretend to say that there is no such firm?

A. I do.

Q. Do you pretend to say that you do not know who "William A. Barnard & Co." represents upon your books?

A. Yes, sir.

Hosted by Google

Q. You say you don't know?

A. Don't know.

Q. Don't know who is meant by it?

A. No, sir.

Q. Do you know Wm. A. Barnard?

A. I do.

Q. Do you know whether he is one of the persons intended by that?

A. Yes, sir.

Q. Do you know anything about who the "Co." is?

A. I do not.

Q. Did you have any understanding with regard to it?

A. No; it was on account—

Q. Now, if you want to explain, go on and state what you know about it?

A. Well, Barnard has an account, and he wanted to open an account in the scrip dicker, and he wanted to open it so as to keep it separate from his own individual account, so I—

Q. Why did he want to keep it separate from his own account, if he was the only person interested in it?

A. That I don't know. I told him to do it in this way. I could keep it correct.

The Presiding Officer—It is now four o'clock. The Senate, sitting as a Court of Impeachment, is adjourned until to-morrow morning, at 9 o'clock.

Hosted by Google

Lansing, Friday, May 10, 1872.

The Senate met and was called to order by the President *pro tem.*

The Sergeant-at-Arms made the usual proclamation.

Roll called: quorum present.

Absent without leave: Senator Sheley.

The Presiding Officer—The Honorable Managers will proceed with the evidence in support of their articles of impeachment. Senators will please give their attention.

Mr. Wheeler—Mr. President, Senator Stoddard desires leave of absence on account of sickness in his family. He has just received a telegram that his boy is worse.

Leave was granted.

CYRUS HEWITT, RECALLED.

Examined by Mr. Manager Huston:

Question. Did you bring up your applications, Mr. Hewitt?

Answer. Yes, sir. [Handing papers to Manager.]

Q. Are those all the applications you made in 1871?

A. Yes, sir; I believe so.

Q. When we adjourned last night we were talking about who composed the firm of Wm. A. Barnard & Co., and you were just going to explain what you knew about it. Will you now explain?

A. Well, Mr. Barnard came to me and said he wanted me either to buy some scrip for him or he buy himself, and to make an arrangement with me to keep an account on the book; and he had an account before that of his own, and asked me how to keep it, and I told him to put it Wm. A. Barnard & Co.,—that would distinguish it from the other account; and so he consented to it, and went on and opened the account in that way.

Q. Why did he want to distinguish it from his other account?

A. I don't know; he did not say.

Hosted by Google

Q. Then you don't know anything about it any further than that?

A. He did not make any remarks why he wanted it.

Q. Don't you know as matter of fact that Wm. A. Barnard & Co. represents Wm. A. Barnard and Charles A. Edmonds?

A. Well, I only know it from guess; they never said anything to me about it, either one.

Mr. Shipman—Mr. President, to save time on that point, there is no dispute about it; the "Co." was Charles A. Edmonds.

Q. Where are your accounts of reservations that you made for other parties kept?

A. Kept in the Land Office.

Q. Who keeps them?

A. The chief clerk or Deputy,—the chief clerk, I think.

Q. Who do you pay for those reserves?

A. I do not pay anything.

Q. Who drew the checks when you reserved the lands?

A. I think I did, some of them, and perhaps some other parties did, I do not remember now. I think I drew most of them; I might not.

Q. Did you ever buy any land upon credit in the office.

A. No, sir.

Q. I understood you to say that you reserved the school land on several sections that I called your attention to yesterday, for Mr. Charlton. Will you look at that order and see whether it is your handwriting or not?

A. Yes, sir, that is my handwriting.

Q. That is the order that you made when you wanted the patents issued to Mr. Charlton?

A. Yes, sir.

[Paper admitted in evidence.]

"LANSING, October 12, 1871.

"*Commissioner State Land Office:*

"Please allow John Charlton to receive a certificate for section

Hosted by Google

16, town 29 N., range 7 W., and town 29 N., range 4 W., which land is now held by me. Truly,

"CYRUS HEWITT."

Q. You say you never purchased any land upon credit. Will you look at that order? [Presents a paper to the witness.]

A. Yes, sir.

Q. That, you did not pay for at the time?

A. Not at the time. I reserved it on my road contract.

Q. You did not, at the time you directed it to be patented.

A. Yes, sir.

Q. This is your handwriting: "Please patent the above lands and I will pay the same." Did you pay it then, or some time afterwards?

A. I paid it then.

Q. What is the date of that?

A. October 21st, 1871.

[Presents another paper to the witness.]

Witness—That is in the same condition?

Q. Why did you say, "I will pay for the same," if you intended to pay for it at the time when you made your application?

A. I meant just as I said,—that I would take up my check I had given heretofore, and pay it into the Treasury.

Q. Your check was on file in this case?

A. Yes, sir.

Mr. Manager Huston—The second order is October 7th, 1871; the first covers 480 acres, and the second 1,080 acres.

Q. This, where it says, "Please pay to the bearer and charge to my account," what does that refer to,—a scrip account that you had in the office?

A. Yes, sir.

Q. That is the way you explain those,—you took your check there, and you would take up the check and pay the money?

A. Yes, sir.

Hosted by Google

Q. Was it a general check you paid out there, or was there a check filed in each particular case?

A. Each particular case.

Q. Have you got those checks?

A. No, sir; I do not think I have.

Q. Check for the lands in 32 N. 2 W., that you paid for on the first day of May,—have you got that check yet?

A. I do not think I have.

Q. You could not produce that check?

A. No, sir; that was a private matter of my own; it had nothing to do with the book.

Q. Does Mr. Robinson have a bank account in your bank?

A. Yes, sir.

Q. Mr. Van Dunham?

A. I think he has.

Q. Mr. Clarke?

A. I do not think he has.

Q. Any of the other clerks?

A. I think Mr. Griswold has.

Q. Can you state what the amount of Mr. Van Dunham's bank account is?

[Mr. Shipman objects, and the question is withdrawn.]

Question. Here is an order for 320 acres of land, dated the 23d of October, 1871; what was that land reserved upon?

Answer. I guess that was reserved on the Bathay contract.

Q. That was after the Bathay contract was assigned?

A. I think it was.

Q. You had no other unmatured scrip, as you term it?

A. Not at that time. I had heretofore, but not then.

The order is as follows:

LANSING, September 23d, 1871.

"S. ½ S. E. ¼ sec. 32, 10 N., 1 W. S. ½ S. W. ¼ sec. 32, 10 N. 1 W. W. ½ of S. E. ¼ sec. 20, 13 N., 4 W. W. ½ of S. E. ¼ sec. 26, 13 N., 4 W.

Hosted by Google

"*Commissioner of State Land Office:*

"Please reserve the above land, on account of my unmatured swamp land road contracts, and oblige.

"CYRUS HEWITT.

"Proofs of non-settlement and abandonment filed."

Question. Why was it, if you reserved it on the Bathay contract, that you state in here, "on *my* contract?" There is no reference to the Bathay contract there, at all.

Answer. I intended it should be. It may have been an oversight in me.

Q. You had no other contract there, at that time?

A. No.

Q. Whose handwriting is that paper, with the exception of the date and signature?

A. It looks like Chas. W. Butler's writing.

Q. That date is yours?

A. Yes, sir.

Q. And the signature is yours?

A. Yes, sir.

Q. That is the only writing there that is yours?

A. Yes, sir.

Q. The description is Butler's, but whose handwriting is the order?

A. That is mine.

Q. It is?

A. Yes, sir; that is mine.

Q. Then it is all yours except the description?

A. Yes, sir.

Q. From whom did you get those descriptions?

A. I think from Mr. Butler.

Q. Where is the order for the land that you reserved last winter,—swamp land? You said in your testimony that you reserved, last winter or this spring, about 1,000 acres?

A. That was last summer. I have not reserved much this winter.

Hosted by Google

By Mr. Manager Grosvenor:

Question. Will you look upon that paper and say whose handwriting it is?

Answer. Mine.

Q. To whom was that addressed?

A. That should have been addressed to the Commissioner of the State Land Office; but there don't appear to be any address there.

Q. To whom was it delivered?

A. Delivered in the office to some one,—I don't remember exactly whom.

Q. Can you remember whether that was addressed to the Commissioner, officially, or an order to one of his clerks?

A. No, sir. I endeavored to address all my communications with the Commissioner, officially, but that seems to be left out.

Q. Look the paper over, and see if you can call to mind upon what occasion you made that.

A. I cannot. That filing is not mine; it is the filing of the clerk. I cannot remember.

[The following is a copy of the paper above referred to:]

"LANSING, Aug. 18, 1871.

"Please reserve the N. E. ¼ of N. W. ¼ of Sec. 26, Town 10 N., R. 2 East, and oblige

"CYRUS HEWITT."

Q. Will you look upon that and say whose handwriting that is?

A. Mine.

Q, Do you remember where you got those descriptions?

A. It strikes me, from Mr. Alderman.

Q. You remember that?

A. Yes, I think I do.

Q. Is there anything about this paper that makes you remember?

A. No, there is nothing about the description. That land appears to be patented now.

Hosted by Google

[The following is a copy of the paper above referred to:]

"LANSING, Aug. 2d, 1871.

"*Com. State Land Office:*

"Please reserve on my, the Bathay order, S. W. ¼ of N. W. ¼ Sec. 2, T. 19 N., R. 5 W.; S. E. ¼ of S. W. ¼ Sec. 2, T. 19 N., R. 5 W.; N. W. ¼ of N. W. ¼ Sec. 11, T. 19 N., R. 5.

"CYRUS HEWITT."

Mr. Manager Grosvenor—We offer the papers just read, in evidence.

Question. Whose handwriting is that? [Showing witness a paper.]

Answer. Mine.

[The following is a copy of the paper shown witness:]

*

SUBDIVISION.	SECTION.	ACRES.	
W ½ of n w	1	80	T. 23 N., R. 5 W
S e ¼ of n w ¼	1	40	" " "
N ½ of s e ¼	1	80	" " "
S w ¼ of s e ¼	7	40	" " "
S w ¼ of s w ¼	8	40	" " "
S ½ of n w ¼	8	80	" " "
N w ¼ of n e ¼	11	40	" " "
W ½ of n w ¼	14	80	" " "
E ½ of n e ¼	15	80	" " "
W ½ of n e ¼	29	80	" " "
S e ¼ of n w ¼	29	40	" " "
W ½ of s e ¼	31	80	" " "
S e ¼ of s w ¼	31	40	" " "
S e ¼ of s w ¼	33	40	" " "
		840	

LANSING, August 16, 1871.

Com'r State Land Office:

Please reserve the above list, on my Theo. Bathay matured order, and oblige.

Yours,

CYRUS HEWITT.

Indorsed on the back as follows:

"Cyrus Hewitt, Aug. 16, '71.

"840 a. reserved, marked Aug. 16, '71.

"Recorded, page 36."

Hosted by Google

Question. Whose description?

Answer. Those descriptions are the description of Elsemore, of Saginaw.

Q. What about?

A. He wanted me to—he asked me if I could reserve the land, and I told him if my contract was not full I would. He said it would be a great accommodation to him if I would.

Q. It was 840 acres?

A. Yes, sir.

Q. And you did reserve that on the Bathay contract?

A. Yes, sir.

Q. Did you make any inquiries whether the contract was full at that time?

A. I told him to look it over, and if it was, I would make some other disposition of it.

Q. What did he pay you for this accommodation?

A. I don't remember; he said he would pay me for my trouble, and be very thankful for the favor.

Q. He did pay you something?

A. Yes, sir.

Q. Do you remember how much?

A. Ten or twenty dollars.

Q. How long did you reserve them?

A. They are not sold yet.

Q. They were reserved in August, 1871?

A. Yes, sir; that annoyed me a great deal.

Mr. Manager Grosvenor—We offer these afflictions, or whatever they may be called, in evidence.

By Mr. Manager Huston:

Question. Is this the book you referred to, as being kept in the Land Office, in your testimony yesterday? [Showing witness a book.]

Answer. That is a Land Office book. I don't know anything about it.

Q. You said you had a book?

A. A general account.

Hosted by Google

Q. Here is a general account.

A. Well, it is all right. Somewhere here, I saw it.

Q. What is that?

A. There is the account of debtor and credit, I think, of scrip business—my own business.

Q. What is the amount on this page, that is charged to you of scrip.

A. It is footed up there $3,677.87. That is the credit side.

Q. This is the only account you had, did you say, in the office?

A. In the Land Office?

Q. Yes.

A. Well, so far as matured scrip is concerned, I guess it is?

Q. This is matured scrip?

A. Yes, sir.

Q. Will you explain how you manage this matured scrip in regard to locating lands upon it.

A. Well, if a man comes to me and wants to buy eighty acres of scrip, I sell it to him at so much, and give an order to the Land Office, and they take it and charge it to me, and locate the land for him.

Q. They take the scrip?

A. They take the order,—my order. I have a general account, —general credit account—and debtor account of course.

By Mr. Manager Grosvenor:

Question. Will you look upon that paper and see whose handwriting it is? [Showing witness a paper.]

Answer. I think that is mine.

Q. Description and all.

A. Yes, sir.

Q. Was that reserved upon the Bathay contract?

A. I think it is, sir.

Mr. Manager Grosvenor—This is an application for land, containing the description. The amount is 2,074.08 acres.

[The following is a copy of the paper above referred to :]

Hosted by Google

SUBDIVISION.	Section.	Town.	Range	Acres.	100ths.	REMARKS.	
E ½ of n e ¼ of and e ½ of s e ¼	27	30 N	9 W	160		Res'd. 7-15-71.	
E ½ of and s e ¼	34	30	9	240		"	"
S w of n e ¼ and e ½ of n w ¼	20	31	6 W	120		"	"
S w ¼ of s e ¼	20	31	6	40		"	"
S w ¼ of s w ¼	21	31	6	40		"	"
N w ¼ of n e ¼	29	31	6	40		"	"
S e ¼ of s e ¼	35	31	9	40		"	"
S ½ of s w ¼	36	31	9	80		"	"
S e ¼ of n e ¼, n w of n e ¼	26	32	9	80		"	"
Lots 1 and 4	26	32	9	71	59	"	"
Lot 4	17	35	4	39	89	Pat,	
Lot 1	20	35	4	35		Pat.	
Lot 2	21	35	4	13	17	Pat.	
				2,074	08		

LANSING, July 15, 1871.

Commissioner Land Office:

I hereby apply to have the above lands reserved from sale, in accordance with the law and your rules, upon the accompanying order from Theo. Bathay, herewith attached.

CYRUS HEWITT.

Indorsed on the back, as follows:

"Cyrus Hewitt, July 15, '71. Recorded page 35–6. Received State Land Office, Lansing, Mich., July 15, 1871."

Q. Do you know whether those lands were reserved?

A. I think so.

Q. Where did you get that list?

A. Well, that is a list that I got from different parties; I don't remember now all of them.

Q. Were you reserving that list for others?

A. Some of them; yes, sir. Some of them were some I had looked up for myself.

Q. Are they reserved now?

A. I think so; yes, sir. They may not be all of them, but most of them are, I think.

Q. [Showing witness another paper.] In whose handwriting is that?

A. That is mine.

Hosted by Google

Mr. Manager Grosvenor—This is another application, dated July 15, 1871.

[The following is a copy of the paper above referred to:]

SUBDIVISION.	Section.	Town.	Range.	Acres.	100ths.	REMARKS.
				47		in No. 2.
Lots 2 and 3	1	33 N.	9 W.	10	30	in No. 3.
Lots 1, 2, 3, 4	14	"	"			
S. e. and e. ½ of n. e. ¼	14	"	"	240		

Commissioner State Land Office:

"Please reserve the above lands on account of my order from Theo. Bathy.

"CYRUS HEWITT.

"*Lansing, July 18, 1871.*"

Indorsed on the back as follows:

"Cyrus Hewitt application. Recorded page 36, 457–64A. Reserved. Received at State Land Office, Lansing, Michigan, July 22, 1861."

Question. Is that 240 acres for the whole description? What amount of lands is contained in that description? [Showing witness paper last referred to.]

Answer. That description is 240, the other is fractional. There is more than 240 in the whole list.

Q. Over 240 acres here?

A. Yes, sir.

Q. Is that still reserved?

A. I think it is.

Q. For whom did you reserve that?

A. Let me see the paper. [Paper handed to witness.] Well, those were, I think, for myself; they were lands that Mr. O. Adams looked up some time ago, and failed and went away, and I took them for what he owed me.

Q. You kept them yourself?

A. Yes, sir.

Q. [Showing witness another paper.] Whose handwriting is that?

Hosted by Google

A. That is mine.

Q. All yours?

A. Yes, sir, made in pencil.

Q. What is the amount of land there you ask to have reserved?

A. Appears to be 482 acres.

Mr. Manager Grosvenor—That date is August 11th, 1871.

Question. Is not there 642 acres there instead of 482?

Answer. [Looking at paper.] Well, there is. That down to the bottom there, 642 acres, I think those lands have been sold. I think they are not reserved now.

Q. What makes you think so?

A. I think they were for Elsemore,—I think so. I will look and see if I am mistaken.

The following is a copy of the paper above referred to:

SUBDIVISION.	Section.	Town.	Range.	Acres.
S w ¼ of s e ¼	19	32 N	3 E	40
S w ¼ of n w ¼	20	"	"	40
N w ¼ of s e ¼	20	"	"	40
W ½ of s w fl ¼	26	"	"	80
N fl ½ of s e lots 1, 2	26	"	"	61.30
E ½ of s e ¼ " 3		"	"	24.25
" 4	26	"	"	59.59
Lot 1	35	"	"	29.90
N e ¼ of s e ¼	35	"	"	40
S w ¼ of n w ¼ lot 2	36	"	"	36.30
N w ¼ of s w ¼	36	"	"	40
				482.25
N e ¼	18	30	7 E	160
				642.25

Commissioner State Land Office:

Please reserve the above list of lands on my order from Theo. Bathay.

CYRUS HEWITT.

Indorsed on the back as follows:

"Cyrus Hewitt. Aug. 11, '71, 642.25, a reserved.

"All reserved, 8-11-71.

"Recorded page 36."

Hosted by Google

Q. You received some consideration from him for reserving the land?

A. Yes, sir.

Q. What did you get for that?

A. I don't remember now. They were not held but a little while on the books before they were taken up. I think that is the list.

Q. Did you charge these men in proportion to the time you held the land?

A. No, not particularly.

Q. You said they were held but a short time. You did not charge much?

A. No.

Q. What was your rate of prices?

A. Well, I could not tell, hardly.

Q. Did you have any rule about it?

A. Not particularly; no, sir.

Q. [Showing witness a paper.] Whose handwriting is that?

A. That is mine.

Q. How are those lands situated now?

A. I don't remember now.

Q. Do you know whether they are reserved or not?

A. No; I don't remember now. It has passed out of my mind.

Mr. Manager Grosvenor—This paper is dated July 25th, 1871.

The following is a copy of the paper above referred to:

SUBDIVISION.	Section.	Town.	Range.	Acres.	100ths.
Lot 2	8	25 N.	8 W.	13	55
N ½ of s e and n e of s w ¼	31	"	"	120	
S w of s w ¼	31	"	"	40	06
N w ¼ and s ½ of n e ¼	32	"	"	240	
S w of n w ¼	33	"	"	40	
E ½ of n e ¼, s w of n e ¼	21	28 N.	7 W.	120	
S e of s w ¼ and n w of s e ¼	11	"	"	80	
n e of n w ¼, s w of n w ¼	22	"	"	120	

Hosted by Google

SUBDIVISION.	Section.	Town.	Range.	Acres.	100ths.
W ½ of n w ¼	28	18 N.	7 W.	80	
E ½ of s e ¼	29	"	"	80	
N w of n e ¼	26	30 N.	7 W.	40	
S w of n w ¼	2	30 N.	9 W.	40	
W fl ½ of s e ¼	15	"	"	45	82
W ½ of n e ¼	23	37 N.	12 W.	80	
N ½ of n w ¼	29	"	"	80	

LANSING, July 25, 1871.

Commissioner State Land Office:

Please reserve the above descriptions on account of my Theo. Bathay order on his contract, and oblige,

Yours truly,

CYRUS HEWITT.

Indorsed on the back as follows:

"Cyrus Hewitt, July 25, 1871, reserved 160 acres. Recorded page 36.

"Received at State Land Office, Lansing, Michigan, July 25, 1871."

By Mr. Manager Huston:

Question. You told me yesterday you had a private book in the Land Office in which your land transactions were kept?

Answer. I did not mean to be so understood. I have no private book, except that where my check is kept.

Q. Then I misunderstood you yesterday; I understood you had a book?

A. No, sir; I presume the office has a book.

Mr. Manager Cochrane:

Question. Were these reservations which were made—these orders—filed in the office at their date?

Answer. Yes, sir.

Q. Invariably?

A. Yes, sir.

Q. Were they never left in the office rather informally, with the provision or arrangement by which you could subsequently make them effective,—that is, simply left in the office as memoranda?

Hosted by Google

A. I have no recollection of any such thing.

Q. There is one date, the 15th of July, which appears not to have been received in the office until the 22d?

A. It might have been left in my own office; I might have neglected to file it.

CROSS-EXAMINATION OF CYRUS HEWITT.

Cross-examined by Mr. McGowan:

Question. Were you ever Commissioner of the Land Office?

Answer. Yes, sir.

Q. How many years ago?

A. My term ended in 1866.

Q. You kept these accounts, when you were Commissioner in the Land Office, of the swamp lands, as between contractors and purchasers,—what is called scrip account there?

A. Yes, sir.

Q. State whether there was any difficulty at that time, in keeping the accounts separate, and keeping them up?

A. There was some.

Q. Do you know what the practice has been, in the Land Office, as to keeping the accounts of contractors separate,—I mean, now, where a contractor had two or three contracts,—whether the accounts of those contracts were kept separate, or whether they were all put in together?

A. I do not know how they keep them now.

Q. Do you know what the practice has been heretofore?

A. I think separate,—they might not have been. Where one man owned two or three contracts, I guess they were all put in together, heretofore. I do not know how they are now.

Q. Have you had any lands reserved to you, in the Land Office, when you had no credits there?

A. I do not know that I have.

Q. Have you, to your knowledge, had any lands held for you,—school or agricultural lands, or any lands, other than swamp lands,—without paying for them, or depositing a voucher?

A. I think not.

Hosted by Google

Q. What kind of a voucher did you usually deposit?

A. If it was swamp lands, I would have them charged up on my contract.

Q. And for school and other kinds?

A. I would deposit my check.

Q. Your attention was called to the swamp lands for which you deposited your check for quarter-payment, which was afterwards procured by Mr. Allison. State whether that check was deposited in good faith, with the expectation of paying it.

A. It was.

Q. Was the check paid?

A. Yes, sir.

Q. State whether, during Mr. Edmonds's administration, you have ever drawn any checks, and let the land go back, or to the State?

A. I do not remember of any, now.

Q. Has Mr. Edmonds been interested in any purchases of land in his office, with you?

A. No, sir.

Q. Do you know whether he had any knowledge of your land transactions, other than officially?

A. No, sir.

Q. Have you had any communication with him with regard to the Allison lands; had you previous to their sale to Allison?

A. I think not.

Q. What kind of orders have you given to parties in reference to reservations of lands on contracts or scrip?

A. Such as have been read here this morning.

Q. Did any clerk in the office have any interest in your land?

A. Not that I am aware of.

Q. Or your land purchases?

A. No, sir.

Q. Did Mr. Robinson, your son-in-law?

A. No, sir.

Hosted by Google

Q. Did he have any knowledge of the various purchases that you made, except what he could find out in the office?

A. No, sir.

Q. Did you ever privately inform him of any of your land transactions?

A. No, sir.

Q. Referring back to the order, giving orders to parties to reserve lands on your unmatured scrip,—did you give orders that carried the patents with them?

A. Not always; that was the intention of them.

Q. Do you know whether there has been any change in that regard?

A. I am informed there is some change.

Q. Informed by whom?

A. By the Commissioner.

Q. What was the practice previous to Mr. Edmonds' administration, with regard to reserving lands on your contracts?

A. I do not remember exactly.

Q. Was it any different from what it was in Mr. Edmonds' administration, previous to Mr. Edmonds' changing the form of these orders?

A. I think it was, some.

Q. In what did it differ?

A. I think the contracts were not kept separate. I think he instituted a different rule with regard to keeping each one on the particular contract to which it belonged.

Q. Mr. Edmonds introduced that rule?

A. Yes, sir; I think so.

Q. Were you able to convey land reserved on contracts previous to his administration by sending the order there?

A. Yes, sir.

Q. Could you hold lands by depositing a check previous to his administration?

A. Yes, sir.

Q. Did you have such reservations made?

A. Yes, sir.

Hosted by Google

Q. Did you have lands held for you previous to his administration on depositing checks?

A. Yes, sir.

Q. Do you know whether that is or is not the practice with reference to other parties who deal with the office?

A. I think it is.

Q. State whether you had reservations made, to your knowledge, at any time, more than your contracts allowed, or more than what would fill your contracts?

A. I am not able to particularly state that. It might have been, but I did not say anything. I have had orders previous to this one, that I have had from individuals, that have been settled up.

Q. Who is Charles W. Butler?

A. A neighbor of mine in the city.

Q. What is his business?

A. Land dealer and agent for parties.

Q. Do you say you have a private account in the Land Office?

A. No, nothing more than with scrip.

Q. Is there such an account kept in the Land Office with Mr. Thomas, who deals in scrip?

A. I think there is.

Q. Do you have a contract of that kind?

A. No, sir.

Q. Do you dictate at all what may be put down, and what not?

A. No, sir.

Q. Is it one of the official records of the office?

A. Yes, sir.

Q. Then, if I understand you, the reservations made in favor of other parties, you keep no account of, but depend upon the office books?

A. Yes, sir.

Q. Reservations made for your own personal benefit, you have your own personal private account?

Hosted by Google

A. Not in the office.

Q. You have no private account there?

A. No, sir.

Q. Then, when you referred to the account in the office, you simply meant a personal account, which the Commissioner kept there with you, as a dealer in scrip?

A. Yes, sir; that is what I intended.

RE-DIRECT EXAMINATION OF CYRUS HEWITT.

Examined by Mr. Manager Huston:

Question. Yesterday, when I asked you if you had an account of the lands you reserved, you said you had no account only such as was in the Land Office; now I understand you to say, in substance, that you have an account,—a personal account,—but that it is not in the Land Office?

Answer. I keep my own memoranda in the office; that is all the account I have.

Q. Then you have a memorandum in your own office of entries you have made?

A. I have not all of them. I sometimes transfer them to this office, and lose sight of them.

Q. Is it not your usual custom to keep a memorandum?

A. Yes, sir.

Q. Can you state the amount of your reservation for the year 1871?

A. No, sir, only what I got from the books.

Q. Have you any road contract?

A. None of my own.

Q. How long since you had a road contract?

A. I never had one of my own; I have always purchased.

By Mr. McGowan:

Question. Did we understand you to say that you had no contract with the State?

Answer. No, sir, none of my own.

Q. How did you get your credits?

A. I bought the contracts of others?

Hosted by Google

Q. Got the credits from others?

A. Yes, sir.

By Mr. Manager Huston:

Question. What did you pay for the Bathay order?

Mr. Shipman—We object. We think it is immaterial what he paid. He got it, and that is sufficient.

Mr. Manager Huston—We think it is material. This order is one of the records in the office. It has been introduced in evidence here, and it appears that this party has not only had a large amount of lands held by checks, but held these for months, which certainly did not cost him anything; and now, as we claim, he has a general order, as it is termed. It is one of the records in the office, I understood, as it already appears by the witnesses that have been sworn, that Mr. Hewitt could reserve whatever lands he saw fit, providing he did not reserve more than the contract of Bathay called for,—which is some 30,000 acres, I think; that he could reserve on that, and when they were taken off, he could reserve again. The object of the question is to show that the order which he paid nothing for—which did not cost him anything—is merely used as a cover to hold these lands; just the same as his check is used

The Presiding Officer—It does not seem to the Chair that it can be material as affecting the respondent or any one in his office, what the arrangement was between the witness and Bathay, unless a portion of the compensation went into the office.

Mr. Manager Huston—If the office has knowledge of the fact—and it already appears by the evidence of the chief clerk, and the evidence of another clerk, that they did have knowledge that it did not carry the scrip with it. They have a certain knowledge in the office, and it is fair to presume that Edmonds has knowledge of the public records in the office, and the arrangement, and it seems to me that it would be competent to follow it up and ascertain whether it costs Hewitt anything to reserve these lands under that arrangement.

Hosted by Google

The Presiding Officer—How can the office be responsible for a trade between Hewitt and Bathay ?

Mr. Manager Huston—Suppose I give an order to Hewitt. I have a contract; and suppose the Commissioner knows I give that order for the purpose of aiding Hewitt in covering lands, without any expense to him. I give him an order for which he pays me nothing. and upon that order he holds a thousand acres of land, and the Commissioner knows that fact. He holds them in that way until he can sell the land. Now I submit, if that is the fact, the Commissioner is doing what he has no right to do. He knows that it is an order merely trumped up for the convenience of Hewitt, and to aid him in holding land and keeping it out of the market, so that the State does not have the benefit of the sale; and not only that, but keeping it away from other purchasers until he has an opportunity to sell them to some one, from the sale of which he can realize a handsome profit. In that view, it seems to me to be competent.

The Presiding Officer—It seems to the Chair that the respondent would be just as responsible, whether he paid him more or less for the privilege. I shall sustain the objection. I will take a vote of the Senate if it is required.

Senator Moffatt—I ask for a vote of the Senate.

The Presiding Officer—Will the Honorable Manager reduce his question to writing.

Mr. Waterbury—Before voting upon that question, I would like to hear that order read; there is a question in my mind whether it was for the benefit of Mr. Bathay, or for the witness. It would make a difference in my vote.

Mr. Manager Huston—I think the order is here.

The Presiding Officer—The Secretary will read the order.

The Secretary read the order as follows:

"MIDLAND CITY, July 13, 1871.

"*To the Honorable Commissioner of the State Land Office:*

DEAR SIR—Please allow Mr. Cyrus Hewitt to reserve on

Hosted by Google

my road contract, it being the Midland City, Houghton Lake and Traverse City State road, and oblige

"Your humble servant,

"THEODORE BATHAY."

The Presiding Officer—Has the Honorable Manager his question reduced to writing?

Mr. Manager Huston—Yes, sir. [Hands it to the Secretary.]

The Secretary read the question, as follows:

"What did you pay Bathay for the order?"

The Presiding Officer—Does the Honorable Manager wish to be heard?

Mr. Manager Grosvenor—One word, Mr. President. It may be that the Managers are under a misapprehension as to the law bearing upon this case; but it has been our impression that this right of withholding land was for the protection of the contractor, and not for any other person. The evidence already adduced tends strongly to show that this was a mere pretense,—that the contractor had sold his contract to a man of the name of Smith, and that he had attempted to sever the right to reserve from the right to enter; that he had attempted to reserve his legal rights in this way so that he could give to one the right to reserve, and to another the right to enter, because all the testimony here tends to show that this man Hewitt did not claim the right to enter on that contract, but he could patent from means derived from another source. Now, if that be so, we say it is a mere excuse, a pretense for violating the spirit and intent of that law; and that law made for the protection of the contractor and his *bona fide* assignee would not protect this man, whom we shall claim is a pretender to the right there; that the real right went with the assignment of the contract. There was the right of the citizen,—there was the right of the contractor; and this imaginary right, which, after all, was more valuable than the scrip itself, the way it has been used, was given to another, who, under the shadow of the office here, could make bargains and get gain for himself. Now

Hosted by Google

I say if that be so,—if we can show that this man paid a mere nominal sum for it, and that must have been within the knowledge of the office,—if we can by any possibility connect that by facts and circumstances tending to show that the Commissioner did know,—might have known,—was obliged to know, the terms of this sale to him, that he held it as a mere pretense, then it would be damaging to this respondent. It is somewhat remote, I grant,—depends somewhat upon his answer, whether it would have very much or very little bearing; but if we can establish by this man that this right was held by him, independent from the other, that he paid nothing for it, or he paid something in the form of favors under the office, or that he was doing what he did and dividing elsewhere,—no matter about anticipating what the proof may be, I say there may be such a state of facts existing here which will make this evidence relevant, tending in some way to sustain the general charge here of corruption in office.

Mr. Shipman—Mr. President, we are not convinced by the Manager that this testimony is admissible. We would not object to this if it were but a single instance; but this is only one instance of a number to get outside of the proper examination of a witness, we think, and to go into his private affairs. The Manager states that there may be such a state of circumstances that this would be relevant. I would submit that it is proper to wait until such a set of circumstances be first shown. The relevancy of the testimony ought to appear when it is offered, or else the Managers or those who offer it should state that they propose to convert and make it so, and we will then take their word for it; but in this case they state nothing of the kind.

I would also submit, Mr. President, that, as a matter of law, it is quite immaterial whether Mr. Hewitt gave a dollar for the order or not. This order, it will be remembered, was given before the assignment of that contract,—the assignment was given subject to that order, of course. What passed between the

Hosted by Google

assignee and assignor is quite immaterial in courts of law. An assignee may sue on a contract, and be sued; not from the consideration for the assignment,—he need not from that; he gave a dollar for it. It is quite immaterial whether he discounts a note sued on, or not, or how he got the paper that he sues on. At all events, that is a question between the assignor and assignee. How can it affect the State? The assignee simply succeeds to the right of the contractor,—that is all. If the contractor had a right to reserve, he had a right to reserve. It is true, the Commissioner did not like the form that these papers were made, and, therefore, changed it, and said that the assignment should be such that it would carry the patent; because, under these open orders, the land could not be patented up, until an order should be given by the contractor. I cannot see how it can possibly affect anybody, whether or not a consideration was given. It has no possible connection with this case. We submit that it is altogether immaterial; it is a matter of his own private business, and is utterly irrelevant to the issue here.

The Presiding Officer—The question is, Shall the question proposed by Mr. Manager Huston be put to the witness? Senators, those who are in favor of allowing the question to be put to the witness will say Aye; those opposed will say No.

The evidence was decided to be inadmissible, by the following vote:

YEAS.

Mr. Moffatt,	Mr. Putnam,	2

NAYS.

Mr. Ball,	Mr. Hannahs,	Mr. Storrs,
Barber,	Jenks,	Waterbury,
Begole,	Mann,	Wheeler,
Briggs,	Price,	Wood,
Cawley,	Prutzman,	President *pro tem.*,
Dexter,	Romeyn,	19
Gay,	Stockbridge,	

Hosted by Google

TESTIMONY OF S. V. CORNELL.

S. V. Cornell, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Huston:

Question. Where do you reside?

Answer. Coldwater.

Q. How long have you lived there?

A. I have lived in that vicinity for thirty-seven years, with the exception of three years that I was in California.

Q. Are you acquainted with Mr. Edmonds?

A. Yes, sir.

Q. Are you acquainted with Mr. Van Dunham?

A. Yes, sir.

Q. How long have you been acquainted with Van Dunham?

A. Ten or twelve years.

Q. Is he one of your neighbors,—does he reside in the same city where you reside?

A. Yes, a part of the time.

Q. Did you buy any land of the State in the fall of 1871?

A. Yes, sir.

Q. Did you buy any in Shiawassee county?

A. Forty acres.

Q. What part of the county was that land in?

A. I don't know what part of the county.

Q. Near what village?

A. Near Vernon Station, I think they call it.

Q. When did you first see that land,—the forty acres?

A. I think some time in September or October.

Q. What was your business down there, at the time you saw the land?

A. My business was looking land.

Q. You went there to see this piece of land?

A. Yes, sir.

Hosted by Google

Q. From whom did you obtain the description of this land?

A. Well, I think Mr. Van Dunham helped me look up the land descriptions.

Q. What information did Van Dunham give you in regard to the land?

A. I don't know that he gave me any, any more than he drew the plats, and gave me the plats of different pieces of land.

Q. This particular piece of land,—what information did he give you in regard to this piece?

A. Nothing more than any of the rest of them.

Q. What did he say with reference to its being licensed land if anything?

A. I don't remember that he said anything in regard to it. I think he spoke and said some of the pieces were licensed and some were not.

Q. What else did he tell you in regard to the licensed lands? What about the proofs, if anything?

A. I don't remember that he told me anything about the proofs, anything more than he said—I think he said that some of the lands were licensed, but they were in market, on account of proof not being sent in of the settlement.

Q. Where was it he told you the lands were in market on account of the proofs not being sent in,—where was it he told you?

A. I can't say as to that, where we were at the time.

Q. Do you not remember it was in the Land Office?

A. I don't remember that it was. It might have been in the Land Office, and it might have been at my place.

Q. What proof was it he said had not been sent in?

A. The description that he gave me. I guess I did not get the description of the two pieces that were licensed.

Q. What kind of proofs did he refer to that had not been sent in, so that the land was subject to sale?

A. What kind of proof?

Hosted by Google

Q. Yes, sir; proof of what?

A. Proofs of settlement.

Q. When was your attention first directed to the fact that lands could be bought because proofs of settlement had not been sent in?

A. I did not know that proof of settlement, or that they had bargained for the lands—whether they were proofs of settlement, or claims, I don't remember which he said.

Q. When was your attention first directed to the fact that there was land that had been licensed that was in market, on account of certain proofs not having been sent in?

A. It might have been at the time I was looking them up.

Q. Was it not before you came here to get your plats at all?

A. Before I came here?

Q. Yes.

A. No, sir; I think not.

Q. Did you not come here for the purpose of buying this class of lands?

A. No, sir.

Q. Was there any one living upon this land in Shiawassee county when you went to look at it?

A. There was.

Q. What was the man's name?

A. I did not learn his name at the time, I don't think,—I don't know but I did.

Q. Do you know what is name is now?

A. Yes, sir.

Q. What is his name?

A. Bauk, or Bouck,—some such name. I don't know how you would pronounce it.

Q. You went down there before you bought the lands?

A. I think I did.

Q. After you saw the land, then you returned and purchased it?

A. Yes, sir.

Hosted by Google

Q. When you was at Mr. Bouck's did you go into his house?

A. I think I did go to the door.

Q. Did you inquire of him the description of this land?

A. I think I did.

Q. Did he give it to you?

A. I don't remember whether he did or not; whether he showed—do you mean showed me the description?

Q. Showed you any paper, or gave it to you verbally?

A. I don't think he showed me any paper; I think he told me the description.

Q. What was the date you was there?

A. I can not tell you exactly.

Q. How long was it before you entered the land, that you was there?

A. Before I entered the land?

Q. Yes, before you bought the land?

A. I don't know that I bought it before I was there.

Q. How long after you was there was it you bought the lands?

A. I can't tell you exactly.

Q. About how many days,—one, two, or three days?

A. It might have been three, and it might have been a week.

Q. Where did you go when you left Mr. Bouck's?

A. Well, I cannot say whether I went to St. Louis before going back or not. It is my impression now that I did.

Q. St. Louis in Gratiot county?

A. Yes, sir.

Q. What were you going up there for?

A. I went up there to look at some swamp lands.

Q. Who made the application for the patent or certificate for this land of Bouck's to the Commisssioner,—who made the application?

A. Well, I can't say.

Q. Your best recollection?

A. I don't remember whether I did myself or I wrote to Van Dunham to do it.

Hosted by Google

Q. What is your recollection in regard to it—did you not apply in person to the Commissioner for that piece of land?

A. No, sir.

Q. Well, to the office?

A. I don't remember whether I did or not. Mr. Van Dunham did, if I didn't.

Q. To whom did you pay money for the land?

A. I had money of my own here, in—

Q. I say to whom did you pay it?

A. If Van Dunham didn't draw it from the bank on my check, I paid it either to Mr. Barnard or to Mr. Robinson,—I think that is his name.

Q. You don't know whether you paid it, or Mr. Van Dunham paid it?

A. I don't know whether I paid it myself, or Mr. Van Dunham did.

Q. How did you buy that land,—was it entered with scrip, or money?

A. Well, I paid the money myself. I bought the scrip, rather.

Q. From whom did you buy the scrip?

A. Well, it was either from Barnard or this other gentleman,—what did I call him?

Q. Robinson?

A. Yes, it was either one or the other of these two men that I paid the money to.

Q. Did you ever see Mr. Bouck after that time?

A. Yes, sir.

Q. When was that?

A. The first time, it was this spring, I think.

Q. What was the occasion of your going to see him then?

A. He wrote me he wanted to buy that land if I had a title to it, and that he would give me two hundred dollars for it if I would take his oxen at one hundred and sixty.

Q. Did n't you write to his neighbors or one of his neigh-

Hosted by Google

bors, immediately after you bought the land, that the land was for sale and you would sell it?

A. I think I did,—the man that went with me to Mr. Bouck's house when I first went there, and I was telling him I had a description of this land, and he told me that in the first place he thought it was forty acres, right back of Mr. Bouck's, but he said that he understood that to be Government land, and he looked the plat I had over, and he thought it was this piece that Bouck was on, and he went on and said that he hoped it was, and that I would buy it and get him out of the neighborhood, for he was a poor, miserable coot,—a poor miserable, lazy coot.

Q. You bought it for that reason?

A. Well, I bought it because it was for sale.

Q. What improvements were there on the place?

A. I didn't go around the place; I should think there was four, five, or six acres; perhaps there might be seven acres, and perhaps a dozen or more fruit trees on it, and a log house.

Q. Who was interested with you in this land?

A. No one, in particular.

Q. In general, who was interested, then?

A. Not any one, as you might say; I had no particular bargain with any one. I can go on and state.

Q. Didn't Van Dunham have an interest in this land with you? Wasn't he to be interested with you, in the profits that were made?

A. I told Mr. Van Dunham I would give him a share in the profits, if he would assist me a little, out of office hours.

Q. What share was you to give him?

A. I told him I would give him half.

Q. Didn't Van Dunham do business for you,—write you on the subject,—and write to Mr. Long, who acted as agent for Mr. Bouck, to settle the matter up?

A. I requested him to write; and I requested Long to write to him here. I was living at Coldwater, and this would be the

Hosted by Google

place of business; and Van Dunham was the only clerk I was particularly acquainted with.

Q. Did you compromise with Bouck?

A. Yes, sir.

Q. Through whom was the compromise brought about?

A. By himself. He made the proposition.

Q. Who acted for you?

A. I acted for myself.

Q. Didn't Van Dunham write, representing you?

A. In what respect?

Q. In respect to getting this settlement. Didn't he write to Long for you?

A. Long wrote to him.

Q. Didn't you tell Mr. Long that if he wanted to write on the subject to write to Mr. Van Dunham at Lansing?

A. I told him this: When we made the compromise at Mr. Long's house, Mr. Long was not at home. It was rather down in the village. I went to see him, and he told me the reason he didn't meet me at Owosso. He was to meet me the day before at Owosso.

Mr. McGowan—Who?

A. Mr. Bouck. He said he had made up his mind that he could not give the $200,—he could not give any more than the oxen for the land, and that was the reason why he did not meet me. He had made up his mind,—they were making some disturbance about a road there, and he had made up his mind to let it go; but he said then that he would give me the oxen for the land, and I told him to leave them in Mr. Long's hands. He wanted to drive them home that night, and said he would drive them back the next day, and leave them in Mr. Long's hands, and the patent could be sent to him.

Q. You didn't answer my question at all. I asked you if you didn't direct Long, when you were there, to write to Van Dunham on that subject?

A. I did. I think I did.

Hosted by Google

Q. After this time did you have any further correspondence with Mr. Bouck or with Mr. Van Dunham?

A. No, sir.

Q. What did you say to Mr. Bouck at that time about making proof of settlement?

A. He said that he had made.

Q. What did you say about his making proofs so you could get your money back from the State?

A. I told him that they would give me my money back if he would make the proof of settlement to the State, and he could get his patent right from the State, or I would give up my certificate and get my money on the land, and would pay me for my trouble and expenses, so I need not lose anything.

Q. And you got the oxen and sold them to Mr. Long.

A. Yes, sir.

Q. When did you find in the law that after you had bought a piece of land and got a certificate that you had a right to return it and have your certificate canceled, and get your money back? Can you refer us to the law—tell us where the law will be found?

A. I cannot tell you.

Q. How did you know you could get your money back if there is nothing in the law?

A. I did'nt know it till I was told of it.

Q. Who told you?

A. I think it was Mr. Van Dunham. I don't think I talked with any one else in regard to it.

Q. Did you talk with any one else on the subject, whether you could get your money back or not?

A. Don't remember whether I did or not.

Q. Did you talk with Mr. Barnard?

A. No, sir.

Q. Robinson?

A. No, sir.

Q. Edmonds?

A. No, sir.

Hosted by Google

Q, Have you ever talked with Edmonds at all in regard to this matter?

A. I have talked with him at my house in Coldwater.

Q. Did you have your certificate canceled and get your money back?

A. Yes, sir.

Q. Who paid you your money?

A. It was, I think, Mr. Van Dunham. He sent it to me in a letter.

Q. That was sent to you?

A. Yes, sir.

Q. To whom did you deliver your certificate after you had got the order?

A. I think I sent it to Mr. Van Dunham.

Q. Did you assign the certificate, or do anything with it only to send it back?

A. I don't think I did.

Q. Did you divide the profits in this transaction with Van Dunham?

A. No, sir; I don't think I did. I don't think there was any to divide.

Q. Van Dunham held your note for $150 borrowed money?

A. Out of land matters?

Q. No,—for borrowed money.

A. Well, he has held my notes a number of times.

Q. When you entered into these land matters, didn't he have your note for $150.

A. He might have had,—yes, I think he had one. I borrowed some money of Van Dunham before he came to the office here at all.

By Mr. Shipman:

Question. You said he had your note when he came here?

Answer. Yes, sir.

By Mr. Manager Huston:

Question. Did Mr. Van Dunham deliver up this note to you?

Hosted by Google

Answer. Yes, sir.

The Presiding Officer—The Court will take an informal recess of ten minutes.

After recess the questioning was continued.

Question. I was asking you, if I remember rightly, in regard to whether Mr. Van Dunham gave up to you a note he held against you for borrowed money, in consideration of profits arising out of this. What was it about that note, and about the profits. Tell me all about it?

Answer. I have told you all there was about it. That I made a proposition. In the first place—I will tell you: When we were talking of buying land, I asked him why he did not purchase swamp lands, and he told me he had no right to, while he was engaged in the office. I told him I would like to get some farming lands, if I could, a few pieces for my boys.

Q. I asked you the question directly. Did he give that note up to you?

A. Yes, sir.

Q. Did you pay him any money for the note?

A. I do not remember. I sold him a horse.

Q. Did he give you up the note on account of what he received out of these lands?

A. I could not say as to that, whether he did or not. I have had more or less deal with him for the last three or four years.

Q. You say the arrangement was, he was to have a half interest?

A. Yes, sir.

Q. Have you not given him a half interest?

A. Not hardly.

Q. Has he had any of it?

A. I have given him some.

A Senator sent to the Chair the following question, which the Secretary read:

"Question. What time was it you had the conversation with the Commissioner at your house in Coldwater in relation to the Bouck transaction?"

Hosted by Google

Answer. I could not give you the date exactly. It was about the time Mr. Bouck and some one from his vicinity came up here to see about the land. Mr. Edmonds told me they came over the day before he came over home. He came to see me about it.

By Mr. Manager Huston:

Question. Did he inform you at that time as to anything with regard to getting your money back, if you gave up your certificate?

Answer. I do not remember that he told me that at that time

Q. Did he not tell you he would give you your money back?

A. I do not remember that he did. He told me that Mr Bouck was a poor man, and he wanted I should be as easy on him as I could.

Q. What part of the money, if any, did Van Dunham send to you, that was refunded?

A. I do not know that I understand the question.

Q. Money that you got back from the State?

A. He sent me $47.20.

Q. What was the amount that was refunded?

A. That was the amount.

Q. For this particular "forty?"

A. Yes, sir.

Q. How did he send that, by check?

A. I think it was currency sent in a letter.

Q. It was not sent by draft?

A. It was not.

Q. Did Mr. Edmonds talk to you with regard to any other land at the time referred to, at your house?

A. I think he spoke of a piece of land I bought in Tuscola county, and I told him I had sold it some ten days or two weeks ago before that.

Q. To whom did you sell it?

A. To a man by the name of Hoyt.

Hosted by Google

Q. Did you get $450 for it?

A. I think so.

Q. Van Dunhan had an interest in that?

A. I gave him a part of it.

Q. What proportion did you give him?

A. I do not remember now how much I did give him,—something like $100.

Q. Did you go up and see that land before you bought it, in Tuscola? Did you see the land?

A. I suppose I did; I did not know at the time—

Q. Was that before you bought it?

A. I think it was.

Q. Do you know whether that was licensed land, or not?

A. I do not remember whether it was.

Q. Do not you know, as a matter of fact, that it was land that had been licensed to Adam Woolover?

A. I think it was; I did not know at the time I was there that this was the piece of land I was buying. The man I got my information from said it must be either that piece of land or the piece adjoining it. The piece adjoining there was no one on. He said it was worth more than this piece.

Q. This piece there was some one living on?

A. I saw a house. I did not know whether there was any one living on it. I suppose it was some half mile from the road.

Q. Did you buy the land?

A. I did.

Q. Did you file any affidavits of non-settlement or abandonment?

A. No, sir.

Q. Did you procure any to be filed?

A. Not that I remember of.

Q. Did you of the land in Shiawassee county?

A. No, I think not.

Hosted by Google

Q. Was it before you bought the land that you were up in Tuscola—before you bought the Woolver land?

A. I think it was.

Q. How long after you were there before you purchased the land?

A. A short time,—I do not remember how many days after

Q. Who gave you the description of this land?

A. Mr. Van Dunham helped me look up all the lands.

Q. What was Mr. Van Dunham's position in the office?

A. I do not know that I can tell you that.

Q. Draughtsman?

A. I think so.

Q. You spoke about three months' proof; how did he ascertain whether the three months' proof had been filed in these cases?

A. I do not know, I am sure.

Q. Did he designate on the plats, any way that you could tell whether the proofs had been filed, or not?

A. He said they had not been filed, if he told me anything.

Q. He told you they had not been filed?

A. I think he told me so.

Q. How long was it after you were up there, before you bought this land?

A. I told you I did not know exactly how long it was.

Q. To whom did you apply for the land?

A. I think I gave the money to Mr. Robinson for that piece of land.

Q, What amount?

A. $95, I think. He wanted to know if I wanted to buy it with scrip, and I told him I did.

Q. You made a personal application for that land?

A. I think I did,

Q. Not by letter?

A. I think I made a personal application for it. It is my impression that I did,—I would not be certain.

Hosted by Google

Q. Did you get a patent or a certificate?

A. I could not say for certain which I got. It is my impression that it was a patent.

Q. Did you buy some land out in Eaton county?

A. 40 acres.

Q. What was that,—licensed land?

A. I do not think it was licensed land.

Q. What interest did Mr. Van Dunham have in that?

A. Not any.

Q. Then he only had an interest in those on which he furnished you the evidence that the three months' proof had not been filed?

A. He did not furnish me any evidence. I went to look at another piece of licensed land, but did not buy it.

Q. Why did you not buy it?

A. There was a man on it, who thought that his house was either on there, or on the 40 next to it.

Q. Is that the reason you did not buy that? Why did you buy Bouck's and Woolover's when they were living on it?

A. Because this neighbor wanted I should buy it; he said it would be a blessing to his family and his neighborhood.

Q. Would you buy it to accommodate Woolston,—he wanted you to buy Woolover out, so as to get him out of the neighborhood?

A. I did not know when I bought that land, that there was any one on it.

Q. You saw the land?

A. I saw the land.

Q. Saw the house?

A. I told you I did not know which of those pieces it was,—the piece that was—the piece that was not--

Q. Did you not see several gentlemen right there at Mr. Woolover's land, and talk with them about those decriptions?

A. No, sir.

Q. Did not you see any one?

A. I saw two men across the wood from that place?

Hosted by Google

Q. Did you not talk with them about the descriptions of land?

A. Yes, sir.

Q. Immediately across the wood from the land?

A. Yes, sir.

Q. They were men that lived in that vicinity?

A. They were; they were at work there,—had just moved in, I should think.

Q. You told them the descriptions you were looking after?

A. Yes, sir.

Q. They could not tell you the descriptions?

A. No, sir; they said it must be that or the piece next to it that there was no one on.

Q. Then you say you would not have bought Bouck's land if Mr. Woolston had not wanted you to buy it to get Mr. Bouck out?

A. No, sir; I did not say I would not have bought it if he had not.

Q. Have you purchased any other lands besides the land that you have stated, from the State?

A. I think not; I think those are the only pieces.

Q. Did you buy a piece up in Gratiot?

A. Yes, sir.

Q. From whom did you buy that?

A. I bought it of Mr. Clarke.

Q. Which Clarke?

A. I cannot tell you his given name; his son is in the office.

Q. O. B. Clarke?

A. Yes, sir.

Q. You made the bargain with Harry Clarke in the office?

A. Yes, sir.

Q. Paid the money to Harry Clarke?

A. I think I did.

Q. At what time was it that you got the plats of Van Dunham?

A. It was in the evening.

Hosted by Google

Q. What did you pay him for those plats?

A. I did not pay him anything.

Q. How many plats did you get—plats of how many towns?

A. I could not tell anything about it.

Q. A dozen or fifteen towns?

A. I should think likely, the different pieces.

Q. You paid nothing for the plats?

A. No.

Q. Did not you know that the law required the plats should be paid for to the State?

A. I paid him in the way I told you.

Q. You paid him for his interest in the land, but did you pay anything to the State for these plats?

A. No, sir.

Q. Did you ever tell Mr. Edmonds what you would give for the Shiawassee lands?

A. I do not think I ever did.

Q. Ever have any talk with him about it?

A. No more than what I told you.

Q. Is that your handwriting?

A. Yes, sir.

Q. To what land is it you refer, in this letter? [Presents a paper to the witness.]

A. The Bouck land. That the man that went with me to show me the land, I think it was, telling me about Mr. Chalker, offered him $300 for that land. He wanted to get him off the place. He told me the reason why; he planted corn there, and what he did not take for green corn, he took in the fall, for his oxen.

Q. What do you mean by saying, "I find that I was right. I have the patent if you have a certificate,"?

A. It was a mistake probably.

Mr. Manager Huston—Mr. President: I would like to read this letter. [Mr. Huston read the letter, as follows:]

Hosted by Google

[EXHIBIT FF.]

STATE OF MICHIGAN, STATE LAND OFFICE,
Lansing, October 23, 1871.

MR. WOOLSTON—*Dear Sir*—I find that I was right. I have the patent for that 40 that we went to look at,—the N. W. ¼ of S. W.,—and it is for sale. I want you to see that man that you spoke to me about, and see if he wants it. I can give him a patent for a deed right from the State, or a certificate, just as he prefers, as I have it in my own possession and have it paid for. I wish you to see him and get his propositions, and write me what he will give for a deed of it right from the State. That 40 of tamarack, etc.

Yours truly,

S. V. CORNELL.

P. S.—When you write direct to me in care of Van Dunham.

Direct your letters to S. V. Cornell, in care of Van Dunham, Lansing, Michigan.

S. V. C.

Mr. Manager Huston—That portion of the letter, in reference to the "40" of tamarack, etc., is not material.

Mr. Manager Cochrane:

Question—Did you have any general agreement with Van Dunham to pay him a compensation for these lands?

Answer. I have no particular agreement.

Q. Did you have any?

A. What you might call an agreement. I told him I would give him a half interest.

Q. That was in Shiawassee land?

A. In the whole.

Q. Why did you not give him a half interest in the land you sold to Hoyt?

A. We have had no settlement at all yet.

Q. You owe that to him, then, under your agreement?

A. Yes, sir.

Hosted by Google

Q. When was that agreement made?

A. I cannot remember exactly the time.

Q. How came you to make it?

A. I made the proposition myself to him. I told him like this: He said he had no right, when I asked him the question, why he did not invest in it himself.

Q. How came you to ask him that question?

A. Well, I think he told me at my place, that there was a chance to invest money in swamp lands, in some of the swamp lands that were very wet years ago; they had been ditched and drained, so that they were good lands now; and then I asked him why he did not invest himself, and he told me the reason why; and I told him I had a few hundred dollars that I could put into lands that would be of benefit to my boy, and that I would invest it if he would. He said he could give me the plats of them, and I told him—then, said I, I will buy some of them if I can find some that will suit, and I will give you a half interest for your help.

Q. What did he say?

A. I don't know that he said anything about it at all.

Q. But he caried it out?

A. Yes, we have been rather partners in horses and buggies, and every such thing, for years. We have been partners in other matters for four or five years.

Q. That was the agreement which you say was not particular; that was the substance of it?

A. Yes, sir, that is the way I understood the matter,—that I was to give him a half interest in what I bought.

Q. Have you ever purchased any other lands than those mentioned, in which he has had an interest?

A. No, sir. I have spoken of all the pieces I bought.

Q. That he had an interest in?

A. Yes, sir.

Q. Does that agreement still continue; is it understood

Hosted by Google

between you and Van Dunham that that agreement still continues?

A. Yes, I suppose so. We have never had any different talk.

Q. You say that money was sent back to you in currency?

A. Yes; I think it was.

Q. Do you recollect the bills of the forty-seven dollars?

A. I will not be certain whether it was all sent back or whether he had paid some of it when he came there; but I know I got $47.50.

Q. Did he send any back?

A. Yes, sir.

Q. By letter?

A. Yes, sir.

Q. Do you recollect what amount?

A. It was my impression it was the whole of it; but it might not have been.

Q. You don't recollect whether 20's or 10's.

A. No, sir; I don't recollect. I think there was one "twenty" and the rest smaller bills.

Q. It is your impression the whole came at once?

A. Yes, sir.

Q. Do you know how he got that money from the office?

A. No, sir; I don't know anything about it.

Q. I understand it had been paid over to the office; that you paid it when you bought the lands?

A. Yes, sir.

Q. You stated to Robinson, you thought?

A. Well, I don't know. I could not say whether I paid it to Robinson, or whether he drew it out on my check. I had some money deposited here in the bank.

Q. Did you not pay it to Van Dunham?

A. No, sir; I did not pay it to Van Dunham.

Q. You cannot say whether you gave him a check or not?

A. I don't know whether I wrote to him to buy it for me, or whether I paid for it myself after I came back.

Hosted by Google

CROSS-EXAMINATION OF S. V. CORNELL.

Examined by Mr. McGowan:

Question. You spoke of a conversation which you had with the Commissioner at your house. State whether you had any conversation with him previous to that about these lands or any of them?

Answer. Not at all; no sir.

Q. State whether previous to that you had any conversation with him about an arrangement between you and Van Dunham?

A. No, sir.

Q. Do you know he had any knowledge of the arrangement between you and Van Dunhan?

A. I don't know that he had.

Q. Please give that conversation you had with him at your house?

A. As I stated here, he said that the county treasurer came up with Bouck and wanted he should see me, and do the best he could to buy the land, and tell me he wanted I should be as easy as I could, for he was a poor man; and I then told him that I would, and sat down, and I think he made the figures; and I told him what expense I had been to, and I gave him the amount and told him he might write to that effect, and he said he would; and then he spoke of this piece in Tuscola. It was Mr. Huston, I think it was, that was here to see about it, and I told him that piece was sold; I had sold it ten days or two weeks ago. That is all that I can recollect that was talked of.

Q. State whether there was anything said, in that conversation,—if so, what,—about letting you have the lands; if he had known that there were settlers on it, or a settler on it.

A. I think that Mr. Edmonds did say he would not have let me had it, if he had known there was a settler on it; and then I went on to tell him what this Woolston told me, up there.

Q. Did he say anything about right to purchase this class

Hosted by Google

of lands,—about their being in the market,—a legal title,—or any thing of that kind?

A. I don't remember that he did, and I don't remember but he did. If he did, he said I had a right to purchase them.

Q. Was there anything said, in that conversation, about Mr. Van Dunham?

A. No, sir.

Q. Was there anything said about any one else having an interest in that land but yourself?

A. No, sir.

Q. Has there been, at any time, between yourself and Mr. Edmonds?

A. No, sir.

Q. Did Edmonds have any interest in any of those transactions of yours?

A. No, sir.

Q. Do you know he had any knowledge of them at all until after they were brought to him officially?

A. I don't know that he did.

Q. You said Van Dunham furnished you ten or fifteen plats?

A. Well, he might have furnished me with as many as that.

Q. What do you mean by ten or fifteen plats, ten or fifteen pieces of paper?

A. Yes, sir.

Q. Different pieces?

A. Yes, sir.

Q. Now, when you wrote to Bouck, you told him you had a patent for it, and you could give him a patent for a deed from the State?

A. Yes, sir; it seems so from the letter.

Q. Did you know then, the difference between a patent and a license?

A. No, sir; I didn't.

Q. Or certificate?

A. No, sir.

Hosted by Google

Q. Do you know whether you had a patent or not?

A. Yes, sir. I know now that it was a certificate that I got.

Q. What do you mean, that you could give him a patent for a deed from the State?

A. I meant I could give him a deed from the State.

Q. Do you know how the deed was to be made from the State to Bouck, you holding the certificate? What was you to do with the certificate?

A. I didn't know anything about it; I didn't pretend to know. I never was inside of a land office until I was here.

Q. These plats that you got,—were they minutes of townships or sections?

A. Township plats, I think.

Q. Showing the whole town and the sections?

A. Yes, sir.

RE-EXAMINATION OF S. V. CORNELL.

Examined by Mr. Manager Cochrane:

Question. You say you did not have a knowledge of how this business was to be transacted, in order to get a deed from the State for Bouck,—no definite knowledge. How did you get and from whom, what knowledge you do have? You seem to have some idea, as appears from that letter. Who told you about it?

Answer. I presume I got it from Mr. Van Dunham. I did not have any talk with any one else. In fact, he was the only one I was well acquainted with.

Q. Did you get it from the Commissioner?

A. No, sir.

Q. Did you have any conversation with the Commissioner about it?

A. None at all.

Mr. Manager Cochrane—That is all.

By Mr. Manager Huston:

Question. I want to call your attention to these orders. State

Hosted by Google

whether those are in your handwriting or not. [Showing witness a book.]

Answer. The signature is my handwriting.

Q. Is the signature to each one of them your handwriting, or only the last one? Yours is the lower one?

A. Yes, sir.

Q. Who wrote those orders? Are they not in Mr. Van Dunham's handwriting?

[The following are copies of the papers shown to witness:]

SUBDIVISION.	Section.	Town.	Range.
S ½ of n e ¼	35	4 N	11 E

To Commissioner State Land Office:

I hereby apply to purchase the above description of land. Inclosed please find purchase money.

Lansing, October 27, 1871.

SAMUEL V. CORNELL.

Com'r State Land Office, Lansing:

I hereby apply to purchase the N. W. ¼ of S. W. ¼ Sec. 36 T. 7 N., range 4 E. Enclosed find $50 to pay for same. Use scrip and return balance.

SAMUEL V. CORNELL.

October 19th, 1871.

Answer. I should think they were.

Q. Those are the orders for the land in Shiawassee and Tuscola counties?

A. Yes, sir; I think so.

Q. Then the orders were made by Mr. Van Dunham,—that is, drawn up by him.

A. Yes, sir; I should think that was Mr. Van Dunham's handwriting.

RE-CROSS-EXAMINATION OF S. V. CORNELL.

Examined by Mr. McGowan:

Question—What is the fact? Were those orders made by your request or not?

Hosted by Google

Answer. Yes, sir, they were.

Q. They were made by your request?

A. Yes, sir.

TESTIMONY OF VAN DUNHAM.

Van Dunham, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Huston:

Question. Where do you reside?

Answer. Coldwater.

Q. What is your business?

A. I have no business at present.

Q. What was your business during the year 1871?

A. Draughtsman in the Land Office.

Q. When did you commence that?

A. I think in February, 1871.

Q. What were your duties as draughtsman?

A. Platting and draughting.

Q. What portion of your time was consumed in platting and draughting?

A. Nearly the whole time.

Q. Didn't you have a great deal of leisure time,—a good many days you did not have much to do?

A. During some portion of the year.

Q. What portion of the year were you at leisure?

A. During the winter season.

Q. How many days were you absent, during the year 1871, that you did not work?

A. I don't know.

Q. Can you tell anywhere near?

A. I don't know as I could guess anywhere near it.

Q. Were you absent fifty days?

A. I don't think I could guess anywhere near it. I never kept an account of it.

Q; How many days were you allowed during the year?

Hosted by Google

A. I always understood that the rules of the office allowed thirty days or one month.

Q. What was your pay?

A. When I first went into the office it was $900, afterwards it was $1,000.

Q. Did you get any perquisites?

A. No, sir; no perquisites.

Q. Did you ever make plats for which you didn't receive pay?

A. Yes, sir; I think I have.

Q. Was it not frequently the case that you made plats and delivered them to a party without collecting any money and paying over to the Treasurer, or paying over to Mr. Barnard, to be paid into the Treasury?

A. No, sir; it was not frequently the case.

Q. Did you furnish plats to any one besides Mr. Cornell that you were not paid for?

A. I don't know that I ever did. I don't remember of any instance.

Q. Don't remember any other instance except that of Mr. Cornell?

A. No, sir.

Q. Are you acquainted with Herbert H. Hoyt of East Saginaw?

A. Yes, sir, I am.

Q. He paid you $125, did he not?

A. He paid me $125.

Q. What did he pay you $125 for?

A. He paid me $125 because he said he considered he owed me that amount.

Q. What for?

A. Services that I had rendered him.

Q. What were the services?

A. I don't know as I could tell you exactly what they were; I had done a good many things for him, through the office and outside of the office.

Hosted by Google

Q. Did you furnish him any plats?

A. I furnished him plats.

A. Did you furnish him any plats for Tuscola and Sanilac counties?

A. I could not say positively; I think it very likely I did, though.

Q. When was it he paid you the $125?

A. I don't remember.

Q. How long ago?

A. I don't remember; it must have been some time during the year 1871.

Q. Was it in the spring, summer, or fall?

A. I would not be positive about it; I think it must have been in the fall, though.

Q. Where was it that he paid you the money?

A. In East Saginaw.

Q. Was it at East Saginaw, or in the office?

A. I think it was at East Saginaw.

Q. In his office in East Saginaw?

A. At his office. I am not positive about it; I think I am quite positive, too, that it was.

Q. Was that after he had bought the land in Sanilac county?

A. I could not say.

Q. Was it after you delivered him the plats of Tuscola and Sanilac counties?

A. I could not tell. I don't remember when I delivered him the plats. I am not certain that I made such plats for him. I know I furnished some plats for him. I don't remember what plats they were.

Q. Can you tell us, definitely, what you understood that he paid you that $125 for? What kind of services?

A. Well, sir, I remember I had conversation with him once, and he stated that he was dealing quite largely in lands, and should want a good many favors through the office, outside of regular business transactions; and he would like to have some

Hosted by Google

one here that he could depend on, to furnish him any information that he might want, and said that he would be willing to pay for it, and wanted to know if I would do so, and I told him I would; and I frequently wrote him, in regard to certain matters, according to the best of my knowledge. I supposed it was in consideration of such service as that.

Q. Did you furnish him any plats showing land that had been licensed?

A. I think I did.

Q. How did you mark those upon the plats so as to designate that they were licensed lands.

A. I don't remember exactly the marks which we used to use,—different marks; checked them in some manner on the plat across the description and then explained the checks on the margin of the plats, usually.

Q. How did you designate that the proof had not been filed, —the three months' proof?

A. I say I don't remember. I did designate it in some manner, and explained it on the margin of the plats,—never had any regular rule for that.

Q. But upon those plats that you delivered to Mr. Hoyt, you designated the licensed land, and also designated the fact that the three months' proof had not been filed, and explained it on the margin of the plats?

A. I could not say that I did these particular plats. I made such plats for him; but whether it was these plats that you are speaking of, I don't know. I think I made plats for him, and designated the licensed lands.

Q. That is what you mean by "such plats?"

A. Yes, sir.

Q. That you did designate the licensed lands?

A. Yes, sir.

Q. Can you state any other party who paid you money for similar services, or for any other services, when you was in the office?

Hosted by Google

A. I don't know that I can give you the name of any other parties.

Q. Do you know a Mr. Marr in East Saginaw?

A. No, sir.

Q. Don't you remember of selling to a gentleman in Saginaw, a piece of land, or the minutes of a piece of land, that contained 105 acres, last fall?

A. I think I do,—yes, sir.

Q. Was not his name Marr?

A. It might have been Marr. It was a gentleman that I was not acquainted with,—not personally acquainted with.

Q. Do you remember when it was you sold him the land?

A. I do not.

Q. When was it you first had a conversation with him, in regard to that piece of land?

A. It was at the office,—the Land Office.

Q. What did you say to him in regard to it?

A. My remembrance of it is, that this man,—if it is the man—I did not know him—I do remember of a man coming there—I presume likely it is the same piece of land—I was making some plats for him. That piece of land I think was reserved to the books of the office, and he inquired of me whether the reserve was good or not,—whether it could be bought. I told him I did not know; I had not examined it, and supposed the reserve was good.

Q. Who was it reserved to?

A. I think it was reserved to W. C. Bush.

Q. Of Saginaw City?

A. I don't know where he is from. I don't know him.

Q. What further did you say to Mr. Marr?

A. I told him to speak to the Commissioner about it, and if the reserve was not good he could undoubtedly buy it, and he wanted I should do so. I was busy at the time, and he was going right out of town he said, and he wanted I should do so, and try to get that piece of land for him; that if I

Hosted by Google

could get it he would pay me well for it. I think that was the substance of it.

Q. Did you speak to the Commissioner about it?

A. I did afterwards speak to the Commissioner about it,—called his attention to that piece of land. I did not speak to him about this conversation,—called his attention to the reserve, and asked him if the reserve was good.

Q. What else did you say to the Commissioner on the subject?

A. I don't remember of saying anything further to him.

Q. You simply asked him if that reserve was good?

A. Yes, sir.

Q. What did he say when you asked him?

A. He said that he would examine it. I remember he made the remark at the time, that he was going over all those reserves, that there was a number of them that he found had been on the books for a long time that were not good, that had been put on before he came into the office, and as fast as he came across them he was removing them, and he would look that up; and in the course of a day or two, he did look that up.

Q. Did you see him when he looked it up?

A. I did not see him look it up.

Q. What did he say to you about it afterwards?

A. He said to me, afterwards, that he had looked it up, and found that Bush had no credit in the office, at all, and that the reserve was not good; that he could not hold the land. I think he took his rubber and marked the reserve off at the same time.

Q. Did Mr. Edmonds mark it off, or did you rub it off?

A. I think Mr. Edmonds did. He may possibly have told me to do so. I could not be positive.

Q. Did Mr. Edmonds personally have charge of that part of the business of the office,—looking over these reserves,—or did Mr. Barnard, or Robinson?

Hosted by Google

A. Mr. Edmonds, so far as my knowledge goes, frequently took personal charge of every department.

Q. Did you have any talk with Mr. Barnard about this piece of land.

A. I don't think I did.

Q. Mr. Robinson?

A. I don't remember of having any talk with any other persons.

Q. After Mr. Edmonds rubbed this off, then you wrote Mr. Marr that he could buy the land, did you not, and made a proposition what you would sell it to him for?

A. I would not be positive. I know I wrote him; what I wrote to him I could not say, now.

Q. Did you not tell Mr. Marr, when you talked with him in the office, that that piece of land was reserved, but you thought you could get it for him?

A. No, sir, I did not. I told him if I found the reserve was not good, that I knew I could not get it,—that he could get it,—that I could get it for him,—that I knew the Commissioner would remove it if it was not good.

Q. Did you not about a week after Mr. Marr was in the office write to Mr. Marr, at Saginaw, and say to him that you had got that land and could sell it to him for $175 or $200?

A. I could not say.

Q. Have you got a copy of the letter that you wrote him?

A. I have not; no, sir.

Q. Did you keep a copy of the letter, in the letter-book?

A. No, sir, I think not.

Q. Is it not rulable, in letters that pertain to the business of the office, to keep copies?

A. It is not rulable to keep copies of clerks' private correspondence.

Q. Then this was a private correspondence,—that between you and Marr?

A. Yes, sir.

Hosted by Google

Q. You were not doing business in behalf of the State?

A. I was doing it for Mr. Marr.

Q. Do you not remember you stated, in that letter, that you had got the land and could sell him the land?

A. I think very likely that was the substance of the letter; I do not remember.

Q. Did you see Marr afterwards? Did he come here after you wrote the letter?

A. I think not,—that Marr. I think there was a man came here who said he was a brother. It was another Marr.

Q. Not the one that talked with you first?

A. No, I think not.

Q. You were out of town when he came here, were you not?

A. I don't remember. I do not think I was.

Q. Do you not remember that Barnard said to you, that Marr was there, and was waiting for you to return,—come to see about the land?

A. No, sir, I do not.

Q. Do you not remember Barnard said he told Marr that you had gone out to get the land of this party, and that he would be back in time for Mr. Marr to get the land and go home on the afternoon train?

A. I do not remember any such thing. I do not think Barnard told him any such thing.

Q. What do you remember about any such conversation as that?

A. I do not remember anything.

Q. Where did you first see Marr that day?

A. I think I saw him in the office.

Q. Was he in the office when you went in?

A. I do not remember.

Q. What amount of money did he pay you for that land?

A. I would not be positive; I think the amount was $175.

Q. Where did he pay you the money?

A. At the office.

Hosted by Google

Q. Who paid the State for the land?

A. I furnished the money.

Q. There was a patent issued that day to Mr. Webster, was there not,—the man Marr wanted it deeded to?

A. I think so.

Q. To whom did you pay the money?

A. The land, I think, was applied for by Mr. Dwynell, and I furnished the money. The sale was made to him.

Q. Then this is the same piece of land that after Bush made his application you went down to Mason and had Dwynell apply for?

A. My remembrance is that Bush's application had been for a long time on the book.

Q. After Marr came and talked with you with regard to this land, and you found it reserved on Mr. Bush's contract, you went down to Mason and got Dwynell to make an application?

A. I did not know that Bush had any contract.

Q. He had it reserved in the office?

A. It was marked to him.

Q. You went down to see Dwynell at Mason, and had him make an application for the land?

A. After I ascertained that Bush's application was not good for anything.

Q. Was it before or after you wrote to Marr that you went down and had Dwynell apply?

A. I think it must have been before.

Q. How long after Dwynell applied for the land was it that you sold it?

A. I could not tell.

Q. You had a certificate issued to Dwynell then, did you not?

A. The certificate issued to Dwynell, I think.

Q. Did Marr go down to Mason with you?

A. No, sir.

Q. Who did go down,—Webster, or did you go alone?

Hosted by Google

A. I don't remember that any one did.

Q. I mean when you went down and got Dwynell to assign the certificate the second time. You went down to Dwynell twice, did you not?

A. Yes, sir.

Q. You say Marr paid you that money in the Land Office?

A. I say I think it was in the Land Office; I am not certain about that.

Q. He paid you $175?

A. I think that was the amount.

Q. How much did the land cost you? What did you have to pay the State for it?

A. It cost a dollar and a quarter an acre.

Q. In cash?

A. I think it was entered with scrip.

Q. Did you pay a dollar and a quarter in scrip, or in money?

A. A dollar and a quarter in scrip.

Q. From whom did you get the scrip?

A. I think the scrip was gotten from Barnard.

Q. Wm. A. Barnard & Co.

A. Yes, sir.

Q. When you got the money from Bush, you paid Wm. A. Barnard & Co. for the scrip?

A. No, I did not.

Q. When did you pay him?

A. Barnard must have had his money before he furnished the scrip.

Q. "Must have had?" What do you *know* about it,—about when Barnard was paid?

A. I know when I handed in the application of Mr. Dwynell's, I handed in the money with it.

Q. Did you not hand in the application the same day Marr was there? Was not there where you had been when Barnard said you were out of town to get the land?

A. No, sir. I think that money had been handed in and the certificate issued two or three weeks previous to that.

Hosted by Google

Q. Do you say you paid in the money to Barnard & Co. the same day the certificate was issued to Dwynell?

A. The same day or previous to that. The certificate may have been issued the same day,—I do not remember.

Q. Did you ever have any other transactions of that kind while you were draughtsman, when you had applications for lands, and you had other parties apply for reserved lands?

A. Very frequently.

Q. Will you state some other case where you did the same thing, and sold the land?

A. I did not state I did the same thing very frequently.

Q. Did you in any other case have a similar transaction to this one?

A. No, sir; I don't remember of any.

Q. Never any other case in which you had land reserved in some one's else name,—had a certificate issued by some one else for your benefit?

A. I do not remember of any other circumstance.

Q. Did you state how you were applied to for this piece of land when you got the certificate of Dwynell. Did you do the business with Mr. Robinson, or Mr. Barnard?

A. I could not say; I do not remember.

Q. Do you know whether you did the business with Mr. Robinson, Mr. Barnard, or the Commissioner?

A. I am quite positive I did it either with Mr. Robinson or Mr. Barnard.

Q. You do not remember positively about it?

A. I do not remember; no. I suppose I handed the application to which one of them happened to be present at the time.

Q. Was that application in your handwriting?

A. I think not.

Q. Whose handwriting was it in?

A. I think it was in Mr. Dwynell's.

Q. Let me call your attention to the patents of the land in

Hosted by Google

Gratiot county,—licensed land, that you and Mr. Clark went up to look at. Will you state what you know about that land?

A. I know it is a pretty good piece of land.

Q. When was it that you went to see that land?

A. I do not remember.

Q. Was it last summer?

A. I think it was last summer.

Q. Or was it in the fall?

A. I could not state the month; I think it was last summer.

Q. You and Mr. Clarke were gone two or three days to look at this land, were you not?

A. I do not remember just how long we were gone.

Q. What day of the week did you go away?

A. I think on Saturday.

Q. When did you return?

A. I am no positive; I think on Monday, though.

Q. When did you buy the land?

A. I did not buy the land.

Q. When was the land bought,—on the day you returned, on Monday, or the next day?

A. I do not remember.

Q. Do you remember whether it was bought at all, or not?

A. Yes, sir; I know it was bought.

Q. Who made the application,—who wrote it down, I mean, —who did the writing?

A. I do not know?

Q. Did you ever see it?

A. I never saw it.

Q. Were you to have any interest in the profits made on that piece of land?

A. I did.

Q. You were to have a half interest?

A. I think Mr. Clarke gave me half the profits when it was sold.

Hosted by Google

Q. Do you not know, as a matter of fact, that Mr. Clarke wrote out the application for that land?

A. I do not.

Q. You never saw the application?

A. I do not remember;—I might have seen it;—I don't remember ever seeing it.

Q. Who first directed your attention to that piece of land in Gratiot county?

A. I could not tell you.

Q. How far is it from here?

A. Perhaps 30 miles.

Q. What does it cost for a horse and buggy to go out there?

A. I cannot tell you.

Q. Cannot you tell me something about it?

Objected to as immaterial.

Mr. Manager Huston—I propose to follow it up, if I can get from him anything about what such a trip cost him, by asking him what information he had in regard to the land, that induced him to incur the expense. My object is to get at how he came to select 40 acres of land in Gratiot county, and go to look it up. My object is to find out from whom he got the minutes.

The Presiding Officer—I do not see how this question can lead to that.

Mr. Manager Huston—You will remember this witness is on the other side of the question.

The Presiding Officer—I do not know that I can change the rule as to materiality or immateriality. The objection is sustained.

Question. When was it that you and Mr. Clarke first talked about going to see this particular piece of land?

Answer. I could not tell you.

Q. Who spoke about it first?

A. I could not say.

Hosted by Google

Q. You cannot tell whether you spoke to Mr. Clarke, with regard to it, first, or Mr. Clarke to you?

A. No, I cannot.

Q. You have no idea how long it was before you went out to look at the land?

A. I do not remember.

Q. Do you remember whether you and Mr. Clarke ever had any conversation, with regard to the land, before you went, at all?

A. I think it very likely we must have. I do not remember the time, or what the conversation was.

Q. You do not remember anything about the conversation?

A. No.

Q. What did you get for that piece of land?

A. I think it was $300.

Q. What was your share of the profits?

A. My share was half the profits; I do not remember what it was.

Q. You know what the land cost, don't you?

A. I don't remember what it cost; no, sir.

Q. You don't know anything about that?

A. I don't remember what it cost; it was probably entered with scrip,—what the scrip cost I do not remember.

Q. You each paid a part of the purchase money of the scrip?

A. No, sir; we did not.

Q. Did not pay an equal proportion? Did you not pay any part of the expenses in getting the land?

A. I think on that trip I paid something. I remember of stopping at a hotel once or twice and paying some expenses.

Q. Well, who did pay for the land, to the State?

A. I could not tell you. I suppose Mr. Clarke did.

Q. Harry E. Clarke?

A. His father, I suppose,—the man that bought it. His father bought it.

Hosted by Google

Q. How is it that Harry Clarke's father advanced the money to buy this land, and then when he sold it that he divided the profits equally between yourself and his son; why did he do that?

A. He probably thought a good deal of us—wanted to do something for us.

Q. Now, sir; do you say that that is the reason, that it was out of friendship for you that O. B. Clarke gave you half of that money?

A. No, sir, I do not; I suppose that O. B. Clarke really was doing it for his son. He had no thought or perhaps no knowledge of my having anything to do with it at all.

Q. You know Mr. Cornell, I suppose?

A. Yes, sir.

Q. Do you remember having any land transactions with him?

A. Yes, sir.

Q. When was that?

A. I could not give you the dates.

Q. Well, what month?

A. I would not undertake to give you the month; it was some time during the past year.

Q. It was the month of October, was'nt it. Is'nt that your recollection that it was in the month of October?

A. I could not say that it was in the month of October.

Q. What time would you say it was?

A. I think it must have been during the past fall sometime. What month I would not be positive about.

Q. What piece of land do you refer to, was during the fall that you was interested with Mr. Cornell in?

A. I think I was interested with Mr. Cornell in a certain matter in a number of pieces.

Q. Will you give us one of the pieces? Tell us where one of them was.

A. I don't know that I could give you the description of any of the pieces.

Hosted by Google

Q. Not the exact description, but the county,—was there one in Tuscola county?

A. There was one in Tuscola county,—yes, sir.

Q. Who gave Cornell the minutes of that piece of land?

A. I could not tell you. I presume very likely I did.

Q. That was the piece that was licensed to Adam Woolover, wasn't it, that you refer to?

A. It was a piece that was licensed. I don't remember who it was licensed to.

Q. How did you ascertain that it was licensed?

A. I ascertained from the records of the office.

Q. Well, how are they kept?

A. On journals and ledgers.

Q. How is it marked upon the plat? Can you tell from the plat-books if the piece is licensed?

A. Yes, sir. It is marked on the plat-book, with the number of the license.

Q. The letter "L?"

A. The letter "L," indicating that it is licensed, and figures to indicate the number of the license.

Q. Is there any other book by which you can determine the same thing?

A. Yes, sir.

Q. What is that book called?

A. It is what would be called the sales-book, or record-book of licenses.

Q. What is it usual to record in that book?

A. The name, date, and number of the license.

Q. Did you have access to that book?

A. Yes, sir.

Q. Do they record anything else in that book except licenses?

A. Nothing, I think, but licensed lands.

Q. This three months' proof that I have heard spoken of, —do they keep a record of those in that book?

A. They did.

Hosted by Google

Q. Now, when you made these plats for Mr. Cornell, and showed that the lands were marked licensed on the plats, did you examine this record to see whether the three months' had been filed?

A. I think I did.

Q. And gave him that information?

A. Yes, sir.

Q. Did you give him that information before you went to look at this land in Tuscola?

A. If I ever gave him any such information at all, I think I must have given it to him when I gave him the plats.

Q. Do you remember whether you or Mr. Cornell paid the money for that land?

A. I never paid any money for Mr. Cornell.

Q. Didn't you pay in the money to Mr. Barnard for the scrip to take that land?

A. I would not be certain. I might possibly have done so. If I did do so, it was Mr. Cornell's money. I did it for him.

Q. You wrote the application, didn't you? The application is in your handwriting.

A. I don't remember. If it is in my handwriting, very likely I wrote it.

Q. Then you don't remember in regard to this piece of land, or the other pieces, whether you paid the money in, or Mr. Cornell paid the money in to Barnard?

A. No, sir, I do not.

Q. What interest had you in this land in Tuscola county?

A. I had no interest in it at that time.

Q. When did you become interested in it?

A. I could not give you the date.

Q. Did you ever have a half interest in that piece of land?

A. I think I did have an understanding or agreement with him by which I was to have a half interest with him in it.

Q. Did you have a hundred dollars of the money that Mr. Cornell got of Mr. Hoyt?

A. I think I had more than that.

Hosted by Google

Q. What amount did you have?

A. I could not give you the amount; I think it was more than a hundred dollars.

Q. Was you interested in the land that Mr. Cornell bought in Shiawassee county, that was licensed to Bouck?

A. I think I had an interest in that, too.

Q. A half interest?

A. Yes, sir.

Q. Did you act as agent for Mr. Cornell in negotiating a settlement with Mr. Bouck for that land?

A. No, sir, not in negotiating a settlement, I did'nt.

Q. [Showing witness a paper.] Will you look at that paper?

The Witness—I think the settlement was made prior to the date of this letter.

Question. Is that your handwriting?

A. That is my handwriting, yes, sir.

Q. Why did you write that letter?

A. I wrote that letter because I got one prior to that, that I thought needed such an answer.

Q. Wasn't you acting as the agent of Cornell in regard to these different pieces of land,—the Woolover land and the Bouck land?

A. Yes, sir; I might have been.

Q. Isn't it a fact that you corresponded with Mr. Cornell in regard to this piece of land, and also corresponded with parties in Shiawassee county, in making the arrangements for selling the land to Bouck?

A. I don't think that I did. No, sir.

Q. Is that the only letter that you wrote upon the subject?

A. I don't think that I ever wrote any letter to Bouck or Cornell in regard to selling that.

Q. Did you write to Long?

A. I wrote that letter to Long.

Q. What did Mr. Cornell get for that land,—a patent from the State?

A. No, sir; I think he got a certificate.

Hosted by Google

Q. What kind of a certificate?

A. A certificate such as the Commissioner of the Land Office issues.

Q. What is called a certificate of purchase?

A. Yes, sir.

Q. Do you know why he took a certificate instead of a patent?

A. No, I do not.

Q. What conversation did you have with Mr. Cornell, at the time you were proposing to settle with Bouck, in regard to his getting his money back from the State?

A. I don't remember.

Q. Did you ever have any conversation with him on that subject?

A. It seems to me that I did have a conversation with him in regard to his getting his money back, in case it was given up to the settler of it.

Q. How did you tell him he could do it?

A. I told him he could do it by surrendering his certificate.

Q. Surrendering it to who?

A. The Commissioner of the Land Office.

Q. Why did you tell him that?

A. I think I heard the Commissioner say that he was going to get Mr. Cornell to surrender his certificate or patent, and in case he could do so, he wanted to patent it to this settler.

Q. Didn't you understand that it was the practice in the office, when a certificate was surrendered, that the Commissioner would cancel it and restore the land to the market?

A. No, sir, I did not suppose that he would cancel it and restore the land to the market. I considered this an extraordinary case.

Q. You considered this an extraordinary case? Why?

A. Because the Commissioner had ascertained that there was a man living on the land, and had made improvements on it, and he thought the settler ought to have it.

Hosted by Google

Q. Mr. Cornell went down to look at the land before he bought it?

A. I don't know whether he did or not.

Q. Didn't you and Mr. Cornell, each, know that there was a settler living on it, before you bought it?

A. No, sir, I don't know that I knew it at the time it was bought.

Q. Didn't you testify, before the investigating committee, that you knew there was a man living upon that land, when that land was bought?

A. I don't think I did.

Q. Do you say you didn't know anything about a settler on the land?

A. I do not remember of having any such knowledge. I do not think that I did know it.

Q. When you first went into that office, it was the rule to require proof of abandonment, was it not, or non-settlement, before the Commissioner would sell any land that had been licensed?

A. I think it is still the rule, provided there has been three months' proof filed?

The Presiding Officer—The hour of twelve o'clock having arrived, the Senate, sitting as a Court of Impeachment, will take a recess until two o'clock.

—

Lansing, Friday, P. M., May 10, 1872.

The Senate met and was called to order by the President *pro tem.*

The Sergeant-at-Arms made the usual proclamation.

Roll called: quorum present.

TESTIMONY OF VAN DUNHAM, CONTINUED.

Examined by Mr. Manager Huston:

Question. If I remember right, I was asking you when the

Hosted by Google

Court adjourned in regard to the time when the rule was changed in reference to making proof of non-settlement or abandonment of licensed land?

Answer. I do not know, of my own knowledge, that the rule was ever changed.

Q. From what source have you knowledge?

A. My knowledge is from knowledge of the law, and, so far as my observation has gone, the custom of the office. So far as I know, it has always been the custom of the office, though I have understood differently lately.

Q. You gathered your information with regard to this matter of proof, in the office?

A. In the office, and from the law itself.

Q. Have you ever heard the Commissioner say anything about it.

A. I do not know that I have.

Q. Never talked with him on the subject at any time?

A. I do not remember any such conversation.

Q. Do you not know that the Commissioner sometime in October did change the rule, and held that where three months' proof was not filed, that it was not necessary to have any proof of any settlement?

A. No, sir; I do not know that the rule was changed,—as I say, I supposed that it had been the rule all along.

Q. Did you not know that in the spring or summer he required proof of non-settlement?

A. Not in case where there had been no three months' proof filed.

Q. You did not know how that was?

A. I supposed it was the other way—that they did not require proof in such cases.

Q. Do you remember the occasion of my being at the office last February.

A. I think I do. I remember your being at the office.

Q. That is where you first saw me, was it not,—at the office?

Hosted by Google

A. That is where I first saw you.

Q. You saw me talk with the Commissioner that day, and with Barnard and Robinson?

A. Yes, sir.

Q. Did you understand the subject I was talking with them about?

A. I did not, only through you afterwards.

Q. Where were you at the time we were talking?

A. I think I was called into the Commissioner's private office to see you.

Q. At the time I was talking with the Commissioner and Mr. Barnard and Mr. Robinson, where was I?

A. I am not sure. My remembrance is that you were in different parts of the office. I saw you talk with Mr. Barnard at his desk, and with Mr. Robinson.

Q. After that the Commissioner took me in his private office, did he not?

A. I know you were in his private office.

Q. Do you not remember when I went into the private office?

A. I do not. I do not know that I saw you after you went in.

Q. After I went into the private office, did Mr. Edmonds go out and bring you into the office?

A. I remember Mr. Edmonds came and spoke to me, and said you wanted to speak to me in the other office.

Q. When he brought you into the office and gave the usual introduction, did he not immediately leave the office, and leave you and me in there together?

A. I am not sure; it is my impression that he did do so.

Q. Did you have a conversation with me there at that time?

A. I did.

Q. On what subject?

A. With regard to a certain piece of land in Tuscola county.

Hosted by Google

Q. What piece was it?

A. I could not tell you the description.

Q. Was it the licensed piece that was in dispute, or Mr. Woolover's?

A. A piece that Cornell had bought.

Q. You understood it to be the licensed land?

A. Yes, sir.

Q. I had a talk with you upon that subject at that time?

A. Yes, sir.

Q. What was said in that conversation by yourself with regard to your being an agent for Mr. Cornell?

A. I do not remember that there was anything said about that.

Q. Did we have any other business together, except with regard to that piece of land?

Mr. Shipman—We object. Is it not better to ask the witness what the fact was?

The Presiding Officer—The objection is as to the form of the question?

Mr. Shipman—It is quite immaterial what the statement of the witness was to Mr. Huston, so far as I can see, unless it can be explained and made material. I object to it.

Mr. Manager Huston—Mr. President, I was in hopes this might go through, without any explanation, because, as the Court can see, the witness is an unwilling witness, and certainly a witness that we have a right to put direct questions to. There cannot be any doubt about that.

Mr. Shipman—We do not object on that ground.

Mr. Manager Huston—What is your ground of objection?

Mr. Shipman—Immaterial.

Mr. Manager Huston—We claim that the testimony is material, for this reason, as we shall show, we think, to the satisfaction of the Court, by other witnesses.

The Presiding Officer—I care nothing about hearing any argument upon that side; I shall allow the witness to answer the question. I suppose it will make no difference because

Hosted by Google

the conversation was between the Honorable Manager and anyone else; but there has been so much testimony as to conversations between this witness and other parties, it seems to me that this is just as legitimate as any other testimony.

Question. Did you have any other business together except with regard to this particular piece of land?

Answer. You have questioned me with regard to that particular piece of land; I do not remember any conversation on any other subject.

Q. Did you not inform me, that time, that you were the agent of Mr. Cornell, and you would write to Mr. Cornell and see how the matter stood,—what Mr. Cornell would take for the land?

A. I think I told you I would, at your request, write to Mr. Cornell. I do not think I told you I was his agent.

Q. Did you not say that you did his business for him?

A. I do not think I did; I do not remember saying it.

Q. You were interested in this piece of land of Mr. Woolover's?

A. I did have an interest in that piece of land.

Q. Did you not know, at the same time you were talking to me about a bargain between Mr. Woolover and Mr. Cornell, that Mr. Cornell had sold the land?

A. Yes, sir; I did know it.

Q. Why did you not inform me?

A. I did inform you to that effect.

Q. Why did you agree with me to correspond with Mr. Cornell if you had informed me you had sold the land?

A. At your request.

Q. You say now you told me you had sold the land, in that conversation?

A. I say now that I told you at that time that I thought Cornell had sold the land; that it was out of his possession entirely; and I remember also that you said you knew it was not sold,—that he had not sold it.

Hosted by Google

Q. Where were you at the time Edmonds called upon you to come and see me?

A. At my desk.

Q. Do you not remember that Edmonds came with me from the front part of the office, took me to the door, opened the door, and I walked in, and he turned right around and went back and called you, and brought into the office?

A. No, I do not. It would be impossible for me to see you without I took particular pains, as my back was turned to you at the desk.

Q. You sat at the table, near the back end of the office?

A. Yes, sir, with my back towards the passage-way, at the rear of the office?

Q. Could you see us as we passed by you into the back end of the office?

A. Not without turning my head. I may have seen you; I do not remember.

Q. How many clerks were there in that office?

A. I could not tell you.

Q. What was the average number of clerks?

A. I think about 15.

Q. Are you interested in a piece of land in Eaton county, with Cornell, or were you?

A. I am not.

Q. Were you at that time?

A. I think I was.

Q. What was that,—State swamp land?

A. Yes, sir.

Q. Have you got any other lands except those you have mentioned,—State lands?

A. I think not.

Q. Have you been interested, during the time you were in the office, in any other lands?

A. I have, during the time I have been in the office, been indirectly interested in quite a number of pieces of land.

Hosted by Google

Q. That you have not stated to-day?

A. Yes, sir; I think, some that have not been mentioned to-day.

Q. Lands that were purchased of the State?

A. Lands that were originally purchased of the State.

Q. You were interested with the party that bought of the State?

A. Yes, sir, I think, with the party who first bought of the State.

Q. Did you have any other ways of making money except that of selling information, and being interested in the purchase of State lands, aside from your salary in the office?

A. Not in the office.

Q. Did you have any way of doing business that was connected with the office, outside of the office, anywhere in the city of Lansing, with any parties, by which you had made any money.

A. No, sir, I think not.

By Mr. Manager Cochrane:

Question. Can you mention the names of the parties, aside from those you have mentioned, with whom you have been interested in lands, purchased of the State?

Answer. No, I do not recall any one else with whom I have been interested. I said I had been interested in other tracts of lands.

Q. How many pieces of land besides those you have mentioned have you been interested in?

A. I could not tell you.

Q. Five?

A. I could not tell you.

Q. There have been three mentioned,—have you been interested in four?

A. I said I thought I had been interested in other pieces.

Q. Can you give us a more definite answer than that?

A. No.

Hosted by Google

Q. Your memory seems to be treacherous in this matter. You recollect what the conversation was between you and Mr. Huston, in the Cornell matter? It is very positive, and very accurate, perhaps. I want you to exercise your imagination a little, and see if you can recollect the names of one single party, besides those that have been called to your attention.

A. I answered your question,--that I could not mention the number of pieces.

Q. I want to call you back to the names of the parties.

A. I say I don't remember that I have been interested with other parties, but I have in other pieces.

Q. What other pieces?

A. I could not give you the other pieces.

Q. Where were they located?

A. I am not very certain, but I think there was another piece of land, in Tuscola county, that Cornell bought.

Q. Are you not pretty certain it was in Tuscola county?

A. I would not say that it was. It was up in that section.

Q. What was the kind of land?

A. It was all swamp land.

Q. Will you state the character of your interest in that land?

A, The character of my interest was simply an agreement with Mr. Cornell. I never had any title,—no conveyance.

Q. We understand that you would not dare to get that. State what the character of your interest was?

A. If you would be a little more explicit I would understand you.

Q. What kind of an interest did you have? You have explained the kind of interest you had with Cornell, in two pieces. Explain the kind of interest you had in these lands?

A. The interest was the same kind of an interest that I had in these.

Q. How much land was that? What was the amount of land in Tuscola county?

A. I could not tell you the amount.

Hosted by Google

Q. How much money did you get for it?

A. I could not tell you that. A number of pieces I changed back to Cornell again, and it was all on some verbal transactions,—by word of mouth. There were never any papers passed. I do not remember them.

Q. Am I to understand you that your transactions with Cornell are so frequent, that none of them make any impression upon your mind?

A. I think I have a distinct impression in my mind of having such transactions with him.

Q. Let us hear about this other piece of land, in Tuscola county.

A. I have given you that distinct impression. My impression is that I have an interest in that land.

Q. You cannot state what it was, except it was of the same character as the other?

A. The same character as the other. I think it was a half interest.

Q. You do not know what money you received?

A. No.

Q. You recollect how much salary you were to get?

A. I think I do.

Q. But those small sums of $100 and $200 you do not recollect as well?

A. I do not remember that.

Q. Stretch your memory, if you can, and see if you can relate any instance where you had any interest with Mr. Cornell?

A. I do not recollect any, at present.

Q. Do you pretend to say that you did not have any other?

A. I do not pretend to say so.

Q. Can you not give us some idea of the number of pieces you have been interested in? They have all transpired since 1871.

A. I think I have answered the question a number of times.

Hosted by Google

I will answer it again. I do not remember the number of pieces.

Q. Sometimes a man recollects at one time when he forgets at another. I did not know but you could get at it. Do you pretend to say that you have an interest only in four pieces,—that that is all?

A. I did not say so.

Q. I say, Do you say that?

A. No, sir; I do not pretend to say so.

Q. Have you any means of information in your possession which would enable you to state the number of transactions?

A. I suppose I have memoranda of all the transactions with Cornell somewhere. I do not know that I could lay my hands upon them at any time. I think I have them in my possession somewhere.

Q. Are they in Lansing?

A. They must be in Lansing.

Q. At your boarding place?

A. Very likely at my boarding place,—at my lodgings.

Q. Will you produce them?

A. I could not say. I say I think I have them. I think they could be found. I think perhaps I could find them.

Q. Have you had arrrangements with any other man besides Mr. Cornell, of this character,—any other person in the State of Michigan, or out of it?

A. No sir, I think not?

Q. Are you sure you haven't?

A. I am quite sure I haven't.

Q. That you would swear that you have not?

A. I suppose I am swearing now.

Q. Will you swear positively to that?

A. I will swear I have not.

Q. Have you been in the habit of selling information in the office, or that you received from the office?

A. No, sir; I have not been in the habit of doing so.

Hosted by Google

Q. Have you ever sold any without having the habit?

A. I might perhaps consider it a sale. Yes; I have given men information and have them pay me for it; never have made a regular sale of it; never have asked them to pay me for any such thing.

Q. To whom have you made such sales, or from whom have you received such gratuities,—that seems to be the name here?

A. I received a gratuity from Mr. Hoyt, for one.

Q. That was $125?

A. Yes, sir.

Q. From who else?

A. I do not recollect any one else. I have frequently received small amounts from strangers—persons that I did not know.

Q. How often do these strangers come in the office and give these gratuities?

A. It is quite seldom. I remember such instances having transpired, though, while I was there.

Q. Can you give any reason why strangers give these gratuities, and parties who are regular dealers in the office, or large dealers in land, do not give them?

A. I think I have given you an instance where both parties did,—strangers, and those who were not.

Q. Mr. Hoyt gave it to you under an agreement. That seems to have been a species of contract between you and themselves. I understand these others are mere gratuities, without any contract.

A. I think Mr. Hoyt's was the same thing. It was a voluntary offer of his.

Q. But it was previous to your business contract with him that he said he would pay you for it.

A. Yes, sir; I think so.

Q. Now, I am speaking of these gratuities that are purely such where you have no previous arrangement,—where a man puts his hand into his pocket, or something of that kind, and

Hosted by Google

hands you a fee. Can you mention any instance of that kind; or, rather, the question was this,—Why is it that strangers do this and regular dealers do not? You say they are strangers to you.

A. I do not know that I could give a satisfactory answer to that. They probably know more about it than I do, themselves. I should think very likely it was just from the fact of their being strangers, though, and they thought, perhaps, by that means they would get favors that they would not get otherwise.

Q. Isn't that apt to be the case in that office?

A. I do not know that it is apt to be the case.

Q. That strangers have to pay in order to get the same favors?

A. No, sir; I do not know any such thing.

Q. Have you any idea what the amount of these gratuities would be?

A. No, sir. I have not kept any account of them. It was small, however.

Q. You are not in the Land office now?

A. I am not.

Q. When did you leave?

A. I think it was about the middle of April. I think the 16th.

Q. Are you one of the clerks that the Commissioner forbid to receive these gratuities,—did he ever say anything to you about that?

Q. I do not think he did. I do not think the Commissioner was ever aware that I did receive any.

Q. Is it customary there in the office for the clerks to receive gratuities?

Q. Not to my knowledge. I do not know anything about what the other clerks do receive.

Q. Each clerk takes care of himself in that respect without saying much to the others?

Hosted by Google

A. I always tried to, myself. I do not know; I suppose they do.

Q. Can you state the highest amount which you ever received by way of gratuity?

A. I think the sum that you have named here from Mr. Hoyt.

Q. That was a bargain which you made with Mr. Hoyt?

A. Other transactions aside from that.

Q. Yes, aside from that?

A. No; I do not know that I could tell you positively. I think not to exceed five or ten dollars.

Q. Did any of the regular customers of the office, or the men who are large land dealers in the office, ever give you any gratuities similar to this that you got of Mr. Hoyt while you were there?

A. Yes, sir, I think I remember of one instance of the kind.

Q. Who was that?

A. A Chicago firm. I think it was one of the members of the firm of Carpenter & Co.

Q. How much did he give you?

A. My remembrance of it, is now, that he gave me either five or ten dollars.

Q. I mean these large gratuities,—I mean $125?

A. I say that is the only instance of that kind that I remember of.

Q. Did you ever receive any of fifty dollars?

A. I don't know that I have. I do not remember any; no, sir, I think not.

Q. Did you ever receive any of fifty dollars for selling information?

A. I do not think I have.

Q. Twenty-five dollars?

A. I do not think that I have; I say that the largest amount I remember of is $10.

Q. Those were gratuitous and received as such. I mean,

Hosted by Google

where you made a regular sale of information. Did you ever sell any minutes?

A. I never sold any minutes; no, sir.

CROSS-EXAMINATION OF VAN DUNHAM.

Cross-examined by Mr. McGowan:

Question. How much leisure did you have in the winter?

Answer. I could not give you any very definite answer. But very litle leisure; but it quite frequently happened there would be a time in the office that there would be no work in my department, in the winter season.

Q. When was your busy season?

A. During the spring, summer, and fall; probably during the spring the heaviest season.

Q. In your busy season do you have to work out of office hours?

A. I have done so very frequently; yes, sir.

Q. State whether you made plats for any one else except Hoyt, and marked the licensed lands?

A. I think I have made them. I do not know that I can give you the names. I think I made them for a number of different parties,—quite a large number.

Q. What was the practice in making plats when the plats covered licensed lands, with reference to marking the licensed lands?

A. The practice was to mark them just as they requested them to be marked. If they requested plats showing vacant lands, we sent them. If they requested plats showing vacant and licensed lands, we sent them also. They frequently requested plats showing vacant and licensed lands, and also marking the licensed lands that had been forfeited.

Q. Were Mr. Hoyt's plats, then, exceptional?

A. No; Not an exception, that I am aware of.

Q. State whether Mr. Edmonds had any knowledge of your arrangement with Mr. Hoyt, as far as you know?

A. So far as I know, he had no knowledge of it.

Hosted by Google

Q. Did he have any knowledge of your arrangement with Mr. Cornell?

A. Not to my knowledge.

Q. Did you ever inform him anything about it?

A. No, sir.

Q. Did he ever speak with you about it?

A. I think the only time he ever spoke to me about it, was the occasion of Mr. Huston's visit to the office, that we were speaking about.

Q. State whether Mr. Edmonds had any interest in any of this land that you were interested in?

A. Mr. Edmonds had no interest in them that I am aware of.

Q. Do you know whether he had any knowledge of your having an interest in them?

A. No, sir, I do not suppose that he had.

Q. Is there anything in the office, so far as you know, whereby Mr. Edmonds might have procured such knowledge?

A. No, sir; I think there is no such evidence.

Q. Do the records show your name connected with any of those land transactions?

A. They do not.

Q. Do you recollect now, whether the application for those two pieces of land bought by Cornell--whether they were written by you?

A. It is my impression now, that one of them at least was written by me; I wrote it for him.

Q. Did you ever write any applications for any other parties?

A. I think I have, but I don't know that I can mention an instance by name.

Q. Do you know whether any of the other clerks are in the habit of doing that?

A. I have seen it done frequently.

Q. State under what circumstances?

A. I think I have seen Mr. Clarke, especially, frequently write applications for parties who came there to buy land, call

Hosted by Google

for the plat-book and look it over, and found descriptions that they wished to purchase, and simply say to him,—it was his business to wait on customers, and he would tell them they would have to make a formal, written application,—it was very frequent that a man was not familiar with the form required, and they would ask him to write it, and I have seen him frequently write them and sign them for them.

Q. You say Mr. Cornell bought the piece in Shiawasse county,—he took out the certificate of purchase?

A. Yes, sir.

Q. Are there any patents issued from the Commissioner's Office.

A. There are not. Issue nothing but certificates.

Q. Where do the parties get their patents?

A. In the office of the Secretary of State.

Q. If a party buys land in Commissioner's Office, what is the paper invariably given them?

A. It is a certificate of purchase. They always get the patent for him if he wants it, or he can take a certificate of purchase and get the patent himself.

Q. Do you know whether there is any specified time in which a party must get a patent?

A. I think there is.

Mr. Manager Huston—I think the law is specific on that. You will not prove that by evidence.

Mr. McGowan—That is all we care to ask.

Mr. Manager Grosvenor:

Question. Are you in the employ of the office now?

Answer. I am not.

The Presiding Officer—The Senator from the Twenty-fifth (Mr. Waterbury) sends the following question, which the Secretary will read.

The Secretary read the question, as follows:

"When you make plats with the names of owners of patented lands and licensed lands, with field notes, swamp lands,

Hosted by Google

rivers, and streams marked thereon, what price do you get for such plats?"

Answer. I think the usual price was $1.50 a plat.

RE-EXAMINATION OF VAN DUNHAM.

Re-examined by Mr. Manager Grosvenor:

Question. Was that the kind of plat you made for Cornell?

Answer. No, sir. It was not.

Q. What kind of a plat was that?

A. Simply a diagram showing the sections and what descriptions were vacant.

RE-CROSS-EXAMINATION OF VAN DUNHAM.

Examined by Mr. McGowan:

Question. What were the fees for that kind of plats?

Answer. Twenty-five cents.

Mr. McGowan—That is all.

Mr. Manager Huston—Mr. Smith is in the room, and desires to make an explanation of his testimony given Wednesday.

The Presiding Officer—Let Mr. Smith be recalled.

OBED SMITH RECALLED FOR EXPLANATION.

Examined by Mr. Manager Huston:

Question—You may make the explanation now that you desire to make. State on which page the question occurred?

Answer—217 page, second column, in answer to question seventh from the top,—Wednesday's proceedings.

Q. Read the question?

A. "But I understand that of all the land to Ripley, you only got forty acres back?"

Q. Give the answer to the question as you want it?

A. As it is here: "I gave him one hundred dollars, then I offered him two hundred dollars, and he refused." It should be: "I offered him one hundred dollars, which he refused; he offered to take two hundred dollars." There was some misunderstanding; something must have been misunderstood. that is the way I meant to give it.

Hosted by Google

Q. Did you decline to pay the two hundred dollars?

A. I declined to pay the two hundred dollars,—just as it is here. I then told him I would proceed as I had with the other lands.

CROSS-EXAMINATION OF OBED SMITH.

Cross-examined by Mr. GcGowan:

Question. I want to ask you a few questions more in regard to the Bathay contract,--first, if Bathay didn't reserve $1,000 on that contract when he assigned it to you?

Answer. He did.

Q. The account made out to you by the Commissioner, showed $17.88 due Preston, didn't it.

A. I don't recollect the exact amount as stated before. There was some $17.50, but I will not be certain.

Q. I want, right in this connection, to get at another item,—whether it was not claimed that in auditing your account at one time for $1,000 or 1,000 acres of land it had been audited twice, and you got a double credit for that amount,—whether it was not so claimed by the Commissioner?

A. It was along in the first part of my transactions, some two years ago. There had been issued, I think, some $1,250 on one that had been issued before. I sent the local commissioner here, and it was issued to him, or rather for me, and I didn't discover it until the next month, or the month after, when that $1,250 was taken out of the next estimate, or the next acceptance. I think it was the next month,—perhaps it might have been longer,—I think it was; $1,250—if my recollection now serves me,—was taken out of that, and out of the order that I had, making it even, as it was before. That had nothing to do with this concern,—I don't know that it had, for that was all correct a good while before.

Q. Wasn't it claimed, on the part of the Commissioner, that that was one of the items that made up the difference between you?

A. I do not recollect exactly about it. I don't know but it

Hosted by Google

was; I am not certain but that was claimed. I have some recollection about it, in the first part of the talk,—that it was stated that it had been paid twice there, and finally looked it up, and found it had been deducted before. I think there was something of that kind.

Q. There was difference between you in that regard?

A. Yes, sir; I don't know but that was one of the items; and it was settled so quick, it has escaped my memory. I only had to refer back to papers before, to show it had been settled before.

Q. Had, previous to that time, been taken out of one of your acceptances?

A. Yes, sir.

Q. Those acceptances are made up in the office of the road commissioner?

A. Yes, sir; and audited by the Board of Control.

Q. Isn't it a fact that on the first four of those contracts they were all kept together in the account in the Commissioner's office?

A. I always supposed it was so from the fact that whenever they furnished me any papers or accounts it was all brought in together.

Q. Now, when you settled at that time and these differences arose between you, did he not claim that the Bathay contract had been kept seprrate?

A. Yes, sir; I stated so before.

Q. Didn't he also state then that your reserves on the four old contracts were much greater than the amount of the contracts?

A. The five.

Q. Five before the Bathay contract?

A. Yes, sir.

Q. Didn't he claim that on this five your reservations were greater than the contracts?

A. Yes, sir,—1,264, something over,—I am not exact as to the amount.

Hosted by Google

Q. Didn't he also claim that he should charge against such contract the reservations made under that contract?

A. No, sir.

Q. That the contract should not be mixed up so?

A. No, sir. He said in the future he meant to do so; it should not be kept in that way.

Q. Did he not say he commenced keeping that contract in the Bathay contract, or separate from the Bathay contract?

A. Yes, sir.

Q. Did not one of the differences grow out of that fact,—that he claimed there was over-reservations on the old contract, and you claimed these over-reservations ought to apply on the Bathay contract?

A. Yes, sir; certainly.

Q. How do you understand, or did you claim to the Commissioner, that he was practicing fraud upon you in this matter?

A. I don't know that I claimed to the Commissioner himself, but I claim there was a fraud practiced upon me in the office.

Q. As the result of his rulings?

A. I don't know whether I ever told the Commissioner that. I rather think I told him it was under the management of his Deputy.

Q. Now, if there was any drawn, it resulted in having your lands marked up to Ripley & Hall?

A. Yes, sir; that is where the fraud lay. I expected to continue right along as it had been before.

Q. Putting the Bathay contract with the others?

A. Yes, sir; and when they made up the amount of this I claimed that the Bathay contract should go in, and they then furnished me with the Bathay contract, charged up in the manner that it was in some $4,000, and I claimed that there was a fraud under that transaction, and that the list of my lands had been furnished by persons in the office to outsiders, by coming down to a certain point, and furnishing a list of my lands from that point down,—the balance.

Hosted by Google

Q. Claiming what was over that, was over-reservations?

A. Yes, sir.

Q. Allowing Ripley & Hall to apply for them?

A. Yes, sir; that was the complaint. I don't know that I have ever told the Commissioner that he ever did commit a fraud,—I don't know that I did.

Q. In this matter of the Preston order, did you understand that there was any fraud in that matter?

A. I supposed, at the time it was done, it was done for the purpose of making up my account so they could reach my land at a certain point. That was what I supposed, if you ask my suspicion. So that was why I claim there was a fraud.

Q. Did you not understand afterwards that they had received a letter from Preston in which he said they had at one time held an order from Bathay, but he had been paid up. Did n't Mr. Edmonds show you that letter?

A. No, sir, he didn't show me the letter; but he said he had a letter showing that Bathay had no claim. I went to see Mr. Preston myself. He said he would write. He said that he had no claim, and had had no claim for two years.

Q. This $1,000 of Bathay's was charged up to you. Did you understand at the time that they were attempting to defraud you?

A. I believe I stated that they at that time—that my account had been overdrawn;—they should not have allowed me, as I had done it in the office, and they knew all about it. They should not have allowed me to draw that $1,000. I did not know when my amount was overdrawn, and didn't suppose that that would have a tendency to do it. They also put in the funds $1,000, at the same time, of scrip to me, and I said that I thought it was an intended fraud. I have said so; and I don't know that I could exactly say that I think so now, from other circumstances.

Q. You have had a very large dealing with the office?

A. Yes, sir; pretty heavy.

Hosted by Google

Q. You have, since this trouble arose between you and the Commissioner, examined into the condition of your accounts?

A. I have, partially, as far as I could.

Q. As far as the differences were concerned, and those marks where lands were marked up to Hall and Ripley; have you examined into that?

A. Yes, sir. I have examined into the affair, and they finally gave me patents for all those lands,—all that I have called for.

Q. Those were given to you under the decision of the Attorney General?

A. I don't know whether that had any affect or not. Mr. Edmonds told me that he did not feel bound by that decision. I suppose, however, that it had its effect there. I presume it did.

Q. That decision, in one respect, was in favor of you?

A. I considered it wholly in my favor. He had answered every point as I contended for it,--I think every point. I so considered it.

Q. Did not the Attorney General, in that opinion, state that the accounts with different contractors ought to be kept separate, and that the reservations on one contract should not overlap on another?

A. I think he said something to that effect.

Q. That was not according to your claim?

A. Yes. I always claimed that they ought to have kept it so; but they not having done so, I thought they should still continue on all the contracts.

Q. Because it had been the practice in the office?

A. I always contended that they should have done so from the beginning.

Q. Not having done so, they should have continued the old practice, for the benefit of settling your claim?

A. That is what I contended.

Q. But, so far as you claimed on your contract, the decision of the Attorney General was against you on that point?

Hosted by Google

A. The decision simply referred back to this,—that they all should have been kept so.

Q. Would not this have been the result if the Commissioner had followed the opinion of the Attorney General,—that he would have cut you out on these over-reservations on your old contract, and not allowed them to have applied on the Bathay contract.

A. I did not so consider it, myself. I did not consider that that was the decision. It might have been. I did not read it, perhaps, as carefully as I might. I considered that as long as they had pursued that practice with us, they should have still continued it.

Q. I am speaking now with reference to the opinion of the Attorney General, under which you say the Commissioner acted.

A. They could not go back, and do that, from the fact that they had no record by which they could do it. They could not have gone back and done it.

Q. The result of the whole thing was that Edmonds allowed you to apply those over-reserves on your old contract, upon unmatured scrip on the Bathay contract?

A. I don't know how he applied it in the end.

Q. You got your reservations?

A. I got all I applied for,—nearly all. I will probably take the balance, or most of them. I have got all the lands in dispute, except, as I stated before, where the title was not considered good.

Mr. Manager Cochrane—Mr. McGowan, I would like to ask you whether the opinion of the Attorney General, to which you have referred, with regard to these reservations, where there are a number of contracts, was a declaration of a principle, or was it his opinion upon the specific case?

Mr. McGowan—If I may be allowed to make a statement. I understand that this witness, Mr. Smith, propounded the questions himself on the specific case, to the Attorney General, and that his opinion was given in answer to those ques-

Hosted by Google

tions propounded by Smith. The questions were sent to the Attorney General over the signature of Mr. Edmonds, so that he would get an official opinion from him. You have the opinion in your hand. The questions are alluded to, but probably not given specifically.

Mr. Manager Cochrane—What I wish to get at is, whether the Attorney General, in giving this opinion, had intended to say that the Commissioner should commence the new system upon Mr. Smith's contracts, precisely as the contracts then existed.

Mr. McGowan—I do not so understand it.

By Mr. Manager Huston:

Question—When was it the thousand-dollar scrip was bought, that you spoke of?

Answer—Previous to the 1st of October, I think.

Q. Had you reserved any land after that, and before the 29th of November?

A. Not on those contracts. I had reserved some special on the Bathay contract.

Mr. Shipman—Mr. President, there is a mistake in the report of the testimony of Mr. Woolover, found on page 200. It will be admitted as a mistake, and I call the attention of the other side to it. In the left-hand column, line 17, the word "eighty" should read "eight."

The error is admitted by the Honorable Managers.

TESTIMONY OF L. B. POTTER.

L. B. Potter, a witness produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Huston:

Question. What is your business?

Answer. I am clerk in the State Road Office.

Q. Where is your office?

A. It occupies a corner or portion of the room of the Land Commissioner's Office,—the southeast corner of that room.

Hosted by Google

Q. How long have you been in the office?

A. I have been clerk in that office since April 1st, 1867,—since the establishment of the office.

Q. How many clerks were there in the Commissioner's office at the commencement of 1871?

A. I never took an inventory of them.

Q. Do you know about the namber?

A. It is simply by a sort of guess,—from ten to fifteen, I think.

Q. Have they been increased during the last year?

A. I think they have.

Mr. McGowan—We object, on the ground that it is a matter that can be shown, officially, from the Auditor Generals office.

Question. What do you know, if anything, with regard to furnishing minutes of land in that office,—the practice among the clerks and officers there?

Answer. Before I could answer the question, to my satisfaction, I would want to know what is meant by minutes, precisely.

Q. Furnishing descriptions of land to outside parties, to purchase.

A. I know very little about it.

Q. Do you know whether there is a practice of that kind allowed in the office?

A. I could not say that I do know that such practice is allowed. I have never had any conversation with the Commissioner, and he never told me what he did.

Q. Have you not had furnished to you lists of lands, from clerks in that office, to enter up for parties that you were acting as agent for?

A. I have had lists of land handed me to reserve.

Q. By whom?

A. Mr. Barnard has handed me most of the lists that have ever come from that office.

Q. How often does Mr. Barnard hand you lists of lands to reserve?

Hosted by Google

A. He has done it several times; I do not know how often. It is a matter that is irregular.

Q. Have you a box in the office?

A. I think that the Commissioner keeps a box, perhaps, with my name on it.

Q. Do you know whether your applications are kept in that box?

A. I do not think my applications are kept all in one box. Perhaps it may be best for me to explain.

Q. Explain.

A. I think the applications that come to me are to be reserved; sometimes on one contract, and sometimes on another. If they asked me to reserve on a certain man's contract, I think the application that I make goes into his box,—not into mine. If I am to put the lands on some other contract, they go intothat other man's box.

Q. When Barnard hands you descriptions of lands, does he give you any direction about reserving them?

A. Nothing more than upon whose contract.

Q. That is the direction he gives you, then?

A. He askes me to reserve into a place, on a certain man's contract.

Q. Do you remember of his giving you a list of lands, in Cheboygan county, last fall or winter?

A. I think he did give me a list of lands, part of which were in Cheboygan county.

Q. He directed you to reserve on Mr. Hall's contract?

A. What Hall?

Q. Edmund.

A. Yes, sir.

Q. Are you agent for Edmund Hall?

A. I am.

Q. Are you agent for any other Hall besides Edmund Hall?

A. I am.

Q. What other Hall?

A. Steven C. Hall and A. M. Green & Co.

Hosted by Google

Q. How many acres were there of this list that he gave and directed you to reserve upon Edmund Hall's contract?

A. I do not remember now how many acres; my impression is not very distinct. I should judge a thousand acres or more. They are a matter of record, and I do not charge my memory with them, after I have made them up and pass them to the office.

Q. Did Barnard ever give you any other list besides that, that you can remember?

A. Yes, sir.

Q. Will you state?

A. He has given me some lists of land over on the west side, —the northwest.

Q. When was that?

A. At different times during the year.

Q. Can you state any case now, and state somewhere near the amount, on whose contract he desired to have the lands reserved?

A. I do not remember that Barnard has asked me to reserve lands on any other contracts than those of Mr. Hall.

Q. Which Hall?

A. Edmund Hall, or Mr. Edmund Hall and Mr. Van Riper and Mr. Hitchcock, separate contractors. But Mr. Hall has power of attorney on file in the office, so that he acts for Van Riper and Mr. Hitchcock, and it is understood by me to be Edmund Hall,—so that these reservations may have gone on the Van Riper contract or Hitchcock contract.

Q. What amount of lands at any other time did Barnard give you, directing you to reserve them on the Van Riper contract?

A. I could not testify now from memory which contract they were asked to be reserved on, or which they were finally reserved upon.

Q. How long ago was this case that you have in mind now?

A. I should think, perhaps, about a year ago.

Hosted by Google

Q. About what was the amount of the land as near as you can remember?

A. I think one or two lists were quite small, perhaps a few hundred acres.

Q. Were there any large lists?

A. I think there was one large list. If I am not mistaken, one list of 4,000 acres or more. I cannot be at all clear as to it, because, as I said before, I do not charge my memory with them. The application is on file, and I could refer to it.

Q. Why did not Barnard reserve those lands himself, instead of handing them to you?

A. Because he had no authority to reserve on Hall's contract directly.

Q. Whom were they reserved for the benefit of?

A. I suppose for Edmund Hall.

Q. You are the agent of Edmund Hall?

A. Yes, sir.

Q. Did you ever have any direction from Edmund Hall to let Barnard look at lands upon his scrip, or have scrip if he desired it?

A. I did have directions from Mr. Hall.

Q. When was that?

A. Some time, I think, during the forepart of 1871. Perhaps in January, Mr. Hall directed me to draw orders for the benefit—perhaps not for the benefit— but to draw orders for the use of Barnard.

Q. What amount have you let Barnard have since then!

A. On looking that matter up, I find that I have let him have $500 in sundry orders. I may explain that. I stated to one of the Managers yesterday, that I thought it was six hundred; that was my memory. After the question was asked me I referred to my book and found it was $500.

Q. Do you know for what purpose Barnard used this scrip?

A. He used it to locate land, I suppose.

Q. Look up land he sold to other parties, was it not. Let me call your attention to one of these orders?

Hosted by Google

A. This is an order asking the Commissioner of the State Land Office to patent in the name of James T. Munroe, two separate descriptions of land.

Q. Will you read the descriptions, if you please?

A. The first description is written by me. S. ½ of the S. W of 5, 8 N. 1 W., 80 acres. The next description, S. ½ of the N. E. ¼ and N. W. fractional ¼ of the N. E. ¼ of section 13, 12 N. 10 W., 120 acres, and in this order I asked the Commissioner to patent these two several descriptions to James W. Munroe, of Clinton county, Michigan, and charge the amount to Edmund Hall's credit, now in the Land Office; and it is signed, Edmund Hall, by L. B. Potter.

Q. Let me ask you, if this scrip was for Barnard's benefit, why you directed the patent to be issued to James T. Munroe?

A. I think now,—my memory is,—because Barnard asked me to have the order made in that form. Mr. Hall had given me directions to draw an order for Barnard.

Q. I want to call your attention to this. It looks as though the last figure of the day of the month had been tried to be made over, and the year had been attempted to be changed, and I want you to say whether that is 1870 or 1871?

A. My opinion is that the date is February 21, 1871.

Q. Are there not marks on those figures that are not your own?

A. There are marks there that I do not recognize as ever having seen before; but I cannot be very positive in my memory as to the thing.

Q. Will you look at that order? [Showing witness a book.] This order is dated May 2d, 1871?

A. That is an order that I drew.

Q. For whose benefit?

A. I drew the order on the same conditions as the other order.

Q. Who gave you the description of the land?

A. Mr. Barnard.

Hosted by Google

The following is a copy of the order referred to:

N. W. ¼ of N. E. ¼, and S. E. ¼ of N. E. ¼, Section 11, Town 10 N., Range 4 E.; 80 acres.

Commissioner State Land Office:

Please patent the above descriptions of land in name of Lester S. Hudson, and charge to credit of

EDMUND HALL.

LANSING, May 2, 1871.

By L. B. Potter.

Indorsed on the back as follows:

'Edmund Hall, May 2, 1871; 9194 for pat."

Question. Will you look on that one? [Showing witness another order.]

Answer. This appears to be an order of a similar charcter.

The following is a copy of the order referred to:

S. W. ¼ of S. W. ¼ of Sec. 17, T. 2 S., 16 W., 40 acres.

Commissioner of the State Land Office:

Please patent the above described 40 acres of State swamp land (which is now reserved in my name) to Lester S. Hudson, Ingham county, Mich., and charge to my credit, on your scrip book.

EDMUND HALL.
By L. B. POTTER.

Lansing, April 24, '71.

Indorsed on the back as follows:

"E. Hall, April 24, '71. 9182, for pat."

Question. That was for Mr. Barnard's benefit, was it? That is the way you understood it?

Answer. Well, it was by Mr. Barnard's direction that the order for the patent was made, for the patent to be issued in the name of Mr. Hudson. As to the benefit, I do not think they informed me.

Q.. This last order states that the land is reserved on Mr. Hall's contract?

A. Yes, sir.

Q. Why did you let Mr. Hudson have that land?

Hosted by Google

A. Because I was authorized by Mr. Hall to do that.

Q. To do what? Did Mr. Hall talk with you in regard to letting Mr. Hudson have this land?

A. I think not, specifically.

Q. Well, how did he, then talk with you?

A. Mr. Hall has given me, perhaps, pretty general instructions, and there are a good many of the lands reserved on his contracts, which he stated to me that if I could dispose of I could draw orders for. I understand that there was an arrangement between him and Mr. Barnard, that he was to allow Mr. Barnard to dispose of this 40 acres of land,—Mr. Barnard to settle with him, as I understand, for the scrip, to locate it with.

Q. Who told you that?

A. That was my understanding.

Q. Did Mr. Hall tell you anything specific about this 40 acres?

A. I don't remember now whether he did specifically about that 40 acres.

Q. Did he tell you anything specific about the land that was deeded to Monroe?

A. I am not certain, sir, that he did tell me, specifically, about that. I think I did it under my general instructions,—that is my impression.

Q. Did he give you similar instructions in regard to other clerks in the office except Barnard?

A. I think he did tell me if Mr. Robinson wished to give me any lists, or should hand me any lists, I should apply for them in his name.

Q. Any others?

A. I think, Mr. Gillam, also.

Q. Was you authorized to have any other dealings with Mr. Robinson, in connection with swamp lands?

A. I don't remember now that I was. I don't remember that Mr. Robinson ever did give me any list; but I remem ber

Hosted by Google

that Mr. Hall said to me, if he gave me any list, I was to apply for it.

Q. What directions did he give you in reference to letting any parties in the office have scrip if they desired it?

A. I have no recollection that he authorized me to give to any of the other clerks except Mr. Barnard. I have no recollection now.

A. Didn't he direct you to let Mr. Robinson have scrip when he wanted it?

A. I don't remember now that he did.

Q. He did direct you to let Mr. Barnard have scrip when he wanted it?

A. Yes, sir; to a limited extent; not to any great extent.

Q. I understand you to say that Mr. Barnard delivered you the list of Mr. Smith's lands. How long was it after Barnard delivered you the list before Edmund Hall knew anything about it?

A. The question, I think, if I remember, was put to me in reference to the land in Cheboygan county. Are those the lands you called Mr. Smith's now?

Q. Were not some of those Smith lands in Cheboygan county?

A. Yes, sir; I think they were, but there were other lands in Cheboygan county.

Q. Then I am under a misapprehension; the list that you referred to that Mr. Barnard delivered to you was not the Smith lands?

A. Well sir, I hadn't heard any thing about the Smith land since I came on the stand.

Q. Did Mr. Barnard deliver to you a list of lands, that were afterwards, as you understood, claimed by Mr. Smith?

A. Yes, sir, I think he did.

Q. In your first statement—

A. A number of them, perhaps; I do not remember the whole list.

Hosted by Google

Q. In your first statement, then, in regard to the lands in Cheboygan county, you did not mean Mr. Smith's lands?

A. Yes, sir, I referred to this same list, but they had not been called Mr. Smith's lands before, and I am not clear that they all were claimed by Mr. Smith.

Q. How long after Mr. Barnard gave you the list of lands, and you made out the application to have them reserved on Mr. Hall's contract, before Mr. Hall knew any thing about it?

A. I could not tell you how long it was. Mr. Hall, sometimes, is at the office very frequently, and sometimes several months intervene. My present memory about the matter is, that some time within two or three months, Mr. Smith was there and claimed the lands, and the matter was brought up in the office, and I think I notified Mr. Hall.

Q. Do you not know that Mr. Smith was there the latter part of November and claimed those lands?

A. I should think it was about that time.

Q. Do you remember the date of Mr. Hall's application?

A. I do not now. If I could see the application I could tell.

Q. Do you know who marked these lands upon the plats with Mr. Hall's initials?

A. No, sir. I did not follow around into the Land Office to see about that.

Q. You didn't see about that?

A. No, sir. When I made the application, I did not know that the lands were claimed by Mr. Smith, or any one else.

Q. You reserved simply upon Mr. Barnard's handing you the list?

A. Yes, sir. I applied on the strength of that.

Q. What do you know about Mr. Ripley's reserving the same lands?

A. I didn't know anything about it until afterwards. The matter came up, and I heard talk between Mr. Smith and the office,—the Commissioner and the Deputy Commissioner.

Hosted by Google

Q. Did you learn from the officers in the office, when they were reserved by Mr. Ripley?

A. I learned this: that it was claimed by Mr. Smith, and, I think, that was acknowledged on all hands, that Mr. Ripley's reservation was put on before Mr. Hall's; but when it was put on., I do not remember now, as to the date. I had nothing to do with the Ripley reservation, and knew nothing about it until it came up, incidentally.

By Mr. Manager Cochrane:

Question. What was the extent of the scrip, that you were permitted to furnish to Mr. Barnard?

Answer. There was no specified amount, but Mr. Hall said, to any limited extent, that he might desire. I think, he remarked to me, that he had confidence in Mr. Barnard, as to allow him to use a limited amount of his scrip, and pay him for it.

By Mr. Manager Huston:

Question. He did n't pay you for it?

A. He did not pay me for it. My understanding was from Mr. Hall and from Mr. Barnard, both, that he was to pay Mr. Hall. I have sometimes sold Mr. Hall's scrip to other parties and received the pay for it, and accounted to him for it.

Q. Do you know anything about Mr. Hewitt reserving land in the office?

A. I think Mr. Hewitt has reserved lands in the office?

Q. About his reserving large amounts on his checks—having them held for him?

A. I have heard that matter talked; but I don't know of my own personal knowledge. I have never seen the checks, or had anything to do with it.

Q. Where was it you heard this talk,—in the office?

A. I have heard it largely within a day or two.

Q. Have you heard it before.

A. I have seen sometimes, once or twice I think, marked on the plat books—I have had access to the plat books when it was necessary for me to refer to them,—and I have sometimes,

Hosted by Google

I think once or twice, seen that lands were marked, and check deposited by Mr. Hewitt, some mark of that character. I may say that I do not undertake to supervise the work in the Land Office, or to know much about it. It is only occasionally that I see these things,—as any man would see them who may be turning over the tract books.

Q. Do you know what the rule has been in the office in regard to selling licensed lands,—in regard to the proofs,—in regard to finding the proofs?

A. I think the rule has been to require proofs to be filed before selling licensed lands.

Q. Where the lands had not been settled, what were the proofs termed?

A. Proof of non-settlement.

Q. Do you know anything about that rule having been changed in the office?

A. I think there was a change in the form of the affidavit, or the execution of it, perhaps. My impressions were that under Mr. Pritchard's administration it was required to be shown by the person purchasing the land, or applying to purchase the land, and I think under Mr. Edmonds' administration, if I am not mixed up about it, that he discarded that and thought it should be shown by other parties besides the man desiring to purchase.

Q. Do you know what the rule was, the forepart of Mr. Edmonds' administration, in regard to requiring proof in all cases of non-settlement, where lands had not been settled that were licensed; and do you know whether it was a rule or not?

A. I do not know that it was. I know more perhaps what the law is than what the rule is.

Q. Did you understand from common reports in the office that Mr. Edmonds changed the rule in regard to licensed lands, and held in the month of October last that it was not necessary to file proof of non-settlement where the proofs, commonly called the three months' proof, had not been filed?

Hosted by Google

A. I do not know that there was any change. I think I have had some conversation with him, but I am not positive about that.

Q. What did he say in the conversation?

A. I think that his idea was that the law placed the lands in market if they were not proved up under the law, without filing the proof.

Q. When was it you held that conversation with him?

A. I cannot now state when it was.

Q. Was it sometime during the fall?

A. I should think it was rather in the early part of his administration. We frequently consulted in reference to matters, and I think we had some talk about that.

Q. [Showing witness a book.] Here is an order Mr. Grosvenor hands me and wishes I should ask you for whose benefit that is?

A. I see that this list of lands and the application for patents is drawn by Edmund Hall.

Q. The next one is the one I refer to; that is your writing, is it not?

A. This is my writing.

Q. Have you any recollection about that order? State for whose benefit it was.

A. I remember that I drew this order.

Q. For whose benefit?

A. The scrip I charged to Mr. Barnard on my account with Mr. Hall.

Q. How many acres are there, there?

A. There are 80 acres.

Q. Is that a part of the $550?

A. That is a part of the $500. It is the first item of $500.

Q. How much land?

A. 80 acres, calling for $100 scrip, as it is termed, or road credit.

[The following is a copy of the paper above referred to:]

Hosted by Google

Commissioner State Land Office:

Please issue certificate for N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 20, T. 10 N,, R 4 E., in name of Cyrus Hewitt, of Ingham Co., Mich., and for the N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Sec. 23, T. 11 N., R. 10 W., to Laurens B. Potter, of Ingham Co., M., and charge to my scrip account, or credit, now in your office.

E. HALL.
By L. B. POTTER.

Lansing, Mich., Jan. 27, 1871.

Indorsed on the back as follows:

"E. Hall, Jan, 27, '71. 9005 and 9006."

Q. What is your next date?

A. My next date is February 20th, 1871.

Q. How much is that?

A. $250. I think that is one of the orders I have read.

Q. What is the next?

A. The next is April 24th, $50. The next is May 2d, $100.

Q. What is the next?

A. I think these items will make $500. Those are all I find on reference to my account with Mr. Hall that I have drawn.

CROSS-EXAMINATION OF L. B. POTTER.

Cross-examined by Mr. Shipman:

Question. This land that went to Mr. Hudson, or this scrip, was some of Mr. Hall's reserve, as I understand it?

Answer. I think they were reserved by Mr. Hall, but I am not positive. I am not clear whether the lands had been reserved by Mr. Hall, or whether they were vacant at the time. There is one of the orders which I have read, and I do not now remember which one it was. It was stated in that order that the land stood reserved to Mr. Hall.

Q. You let Mr. Barnard have the scrip, did you?

A. I charged Mr. Barnard with the scrip,—he to settle with Mr. Hall for it.

Q. Each of the transactions?

A. Yes, sir.

Hosted by Google

By Mr. Manager Huston:

Question. I did not quite understand about his settling with Mr. Barnard.

Answer. I charged these items to Mr. Barnard with the understanding that Mr. Barnard would settle with Mr. Hall.

By Mr. Shipman:

Question. It was simply, then, a sale of so much scrip to Mr. Barnard by Mr. Hall.

Mr. Manager Huston—You do not wish him to state his conclusions in regard to it?

Mr. Shipman—I wish to see if I am right. I have a right to put a leading question if I choose.

Question. Will you state, then, the fact?

Answer. I drew an order for these--I drew several orders for these several amounts, and I drew them up by Mr. Barnard's direction and I charged him with the amount, and rendered the amount to Mr. Hall, which he was to settle with Mr. Barnard.

Q. What amount did you charge Mr. Barnard,--what was the price of scrip?

A. I didn't fix that scrip because I left that to be fixed by them.

Q. Did you keep the date of the transaction?

A. I have the date.

Q. You kept the date at the time?

A. Yes, sir; I took these items from my memorandum, and the dates will show, as they are the original entry.

Q. Now, about that order of February 21st, 1871?

A. February 20, is as I have it.

Q. To James T. Munroe?

A. Yes, sir.

Q. A patent to James T. Munroe, for some lands,—what lands were these?

A. I have already read the description.

Q. I know the description; but whether they were lands reserved by anybody; and, if so, on what contracts?

Hosted by Google

A. I am not clear whether they had ever been reserved on Hall's contract. My presumption is, now, that they were vacant. One of these orders showed that they were credited to Hall's contract.

Q. The order to patent certain lands to James T, Munroe?

A. This land, patented in the name of James T. Munroe, does not state, It reads, the "S. ½ of S. W. ¼, Sec. 5, T. 8 N, Range 1 W, 80 acres; S. ½ of N. E. ¼ and N. W. ¼ of N. E. ¼ Sec. 13, Town 12 N., 10 W., 120 acres."

Com'r of State Land Office:

"Please patent the above lands in name above given, and charge to my credits now in your office."

The name, James T. Monroe, is written opposite the description, and it is dated February 21, and I have the date February 20, from my memorandum.

Question. You don't know whether these lands were reserved or not?

Answer. I don't. I am not positive whether I ever knew.

Mr. Shipman—Do I understand you are going to call Mr. Hall?

Mr. Grosvenor—Not to-day.

Mr. Shipman—Do you by-and-by?

Mr. Grosvenor—We have not yet decided.

Mr. Shipman—If you do not know, it may make some difference in our examination.

Mr. Huston—We will not say we will call him; so you can go on with your examination just the same,

By Mr. Shipman:

Question. In regard to the list furnished Mr. Robinson and Mr. Gillam,—what is the fact about that?

Answer. I remember one time Mr. Hall was in the office and I was sitting at my desk. He said if Gillam hands you a list of lands, or at different times hands you a list, you will have them reserved on an order from me; and also in regard to Mr. Robinson. I think in all cases where I ask reservations on

Hosted by Google

lists handed me, they have been reserved on lists of Mr. Edmund Hall.

Q. Did Mr. Gillam furnish you a list?

A. He did furnish me a list of five eighty-acre lots, I think.

Q. Do you know when he got them?

A. I do not.

Q. When was it?

A. I think it was about six months ago; I think it was from six to eight months. This matter of particular dates of occurrences I do not pretend to be very correct about, for I cannot without referring to memoranda made at the time.

Q. Can you remember the circumstances so as to state how it happened? Mr. Gillam gave you the list you spoke of?

A. I don't remember anything particular about the circumstances now.

Q. Mr. Gillam was engaged in removing old reservations from the books?

A. I think Mr. Gillam—I know, generally, that Mr. Gillam has general charge of that department in the Land Office, examining the old reserves and examining them with the contracts; and he would be likely to find all reserves.

Q. Clearing up the books in reference to reserves?

A. Yes, sir.

Q. Wasn't it a fact that there were a great many, or more or less, lands reserved on old contracts, which had been paid up?

A. That is a matter of fact in reference to the old reserves that had been hanging along.

Q. Did Mr. Robinson furnish you any list?

A. I think Mr. Robinson never furnished me any. I was instructed to reserve them if he did, but I believe I never received any list from him.

Q. How many lists did Mr. Gillam furnish you?

A. I am not clear whether he handed them to me at two different times. I rather think he did. I was looking at my

Hosted by Google

memorandum and I remember that there were five 80-acre lots.

Q. That was all?

A. That was all.

Q. Can you—about Mr. Barnard's list—show which he furnished?

A. I can't tell. Barnard handed me lists at several different times, to quite an amount.

Q. When did Mr. Barnard furnish you the first list,—during Mr. Edmonds' term, or about when?

A. I cannot be at all positive about the date.

Q. When the last list?

A. A few days ago.

Q. How long ago?

A. My impression is, the 4th of this month.

Q. Can you tell me the amount of that?

A. I think it is less than 200 acres. I think three descriptions.

Q. Reserved on Mr. Hall's contract, or on what?

A. I think I reserved that on Mr. Steven C. Hall and Mr. A. M. Green's contract,—a new contract that had been recently made. I don't mean to say that I reserved that. I applied to have that reserved, but I don't want it written down.

Q. You spoke of boxes,—parties having boxes in the Land Office. State what the practice is in regard to keeping boxes there, and for what parties they are kept.

A. The practice is to keep the papers that may be on file in the Land Office, in file boxes,—mostly in paper boxes. Most of them are boxes that have a lid and are entirely closed up. Some of them are open at one end. I think the practice has been, ever since I have known the office, to keep those papers mainly by individual accounts. For instance, Mr. Edmund Hall takes a contract and is liable to have quite an amount of correspondence in the office, and they usually take a box and write the name on the box with a pencil, and then the papers

Hosted by Google

that are to be filed, pertaining to him, are put into this box. I think that is about the idea of it.

Q. You have stated specially, in regard to Edmund Hall?

A. Well, any other man similarly situated.

Q. How situated,—as contractor?

A. Yes, sir.

Q. How many boxes are there?

A. A good many,—I have not counted them.

Q. Can you give any estimate,—whether one dozen, one hundred, or one thousand?

A. The boxes devoted to this individual account, I should guess, one hundred. There may be more or there may be less, going back through to all the administrations.

The Presiding Officer—Are you very nearly through with this witness?

Mr. Shipman—We desire to ask a few more questions in the morning.

The Presiding Officer—The hour of four o'clock having arrived, the Senate, sitting as a Court of Impeachment, stands adjourned until to-morrow morning at nine o'clock.

Saturday, A. M., May 11th, 1872.

The Senate met and was called to order by the President *pro tem.*

The Sergeant-at-Arms made the usual proclamation.

Roll called: quorum present.

Absent without leave—Senator Begole.

Mr. Randall—Mr. President: On the 30th of last month, by the generosity of the Senate, I was granted an indefinite leave of absence by reason of the sickness of my child. Since that date important testimony has been taken, and important legal arguments had in this case, none of which I have been

Hosted by Google

able to hear, and none of which I have been able to read in the journal. I have most serious doubts as to the propriety of my sitting as a juror in this case, and I would ask the Senate for leave of absence for the balance of this trial on that account.

Leave was not granted.

The Presiding Officer—The Gentleman Managers, upon the part of the House of Representatives will proceed with their evidence in support of the articles of impeachment. Senators will please give their attention.

CROSS-EXAMINATION OF L. B. POTTER, RESUMED.

Cross-examined by Mr. Shipman:

Question. You spoke of some reservations in favor of Edmund Hall, on Obed Smith's contract; will you state whether or not those were released to Mr. Smith?

Answer. Reservations that I applied for in behalf of Mr. Hall?

Q. Yes, sir.

A. That had formerly been reserved by Obed Smith?

Q. Yes, sir.

A. They were released by me,—that is, I drew the release in behalf of Mr. Hall, signed his name to it in favor of Obed Smith; that is, I let Obed Smith have the land.

Q. In regard to the clerks in the office there, you spoke of there being more clerks than under Mr. Pritchard's administration, I believe?

A. Yes, sir; I think I did.

Q. Will you state how the clerks have been employed since Mr. Edmonds has been there, generally, as to their duties, and how busy they were?

A. It would be my opinion that the clerks in the office had been as busy as heretofore.

Q. Can you state, more definitely and fully, the kind of work they are doing, whether additional work or not?

A. They are doing some additional work. Not very long

Hosted by Google

after Mr. Edmonds took the office,—I think he said that to me and to others,—that he thought there should be an abstract history of all the lands belonging to the State which he did not find in the office; and afterwards he put a force of his men upon that work, and I think four men have been employed constantly at that work,—perhaps five men some of the time, but four regularly at the work.

Q. State whether there was an extra clerk employed for any other work in that office.

A. Since the office was removed to the present quarters the arrangement of the office was such that the Commissioner thought it was not best, for several reasons, that men coming to do business with the office should go through the office and help themselves, and he therefore made an arrangement by which a clerk should have it his especial duty to wait upon customers who should come to do business at the office. If they wanted to see a tract-book the clerk was to bring it to them and give them such information as they desired.

Q. How in the other business there,—in any other department? Anything additional taking care of the reserve-books or tract-books?

A. The reserve-book,—there has been a clerk assigned to the duty of keeping that book. It is a book that was started however, and kept to some extent, under Mr. Pritchard's administration. It is not a new branch of work, but I think it is kept more fully and thoroughly than it was before.

Q. Have you any means of knowing whether they had got far behind or not during Gen. Pritchard's administration?

A. It had got considerably behind.

Q. I wish to call your attention to some lands that you spoke of yesterday that were patented in the name of James T. Munroe, under order of Feb. 20, 1871. Can you state whether those lands were reserved upon Edmund Hall's contract?

Hosted by Google

A. I have looked at a list of applications for reserves, this morning, and I find that those lands were in the application.

Q. Will you state the date of the application?

A. December 14, 1870.

Q. Whose application is it?

A. It is an application which I made, to have reserved for Mr. Hall.

Q. State whether the lands you spoke of, that were patented in favor of L. S. Hudson, are in that list?

A. I think they are.

Q. And the land mentioned in the order of April 24, 1871,—the S. W. of the S. W. of 12, 2 S., 16 W.?

A. That is here.

Q. All in this same application of December 14?

A. I think they are.

Mr. Shipman—We wish to introduce in evidence that document as a part of the cross-examination.

Mr. Manager Huston—I would like Mr. Potter to explain why George L. Hitchcock's name has been stricken from here, and Mr. Hall's placed below?

Witness—For the reason that Mr. Hall has a power of attorney to handle Mr. Hitchcock's contract.

Question. Then they were reserved on Mr. Hitchcock's contract?

Answer. On the Hitchcock contract; but, as I stated yesterday, Mr. Hitchcock's and Mr. Van Riper's on Benjamin Hall's contract were all put into the hands of Edmund Hall by a written instrument.

Mr. Manager Huston—We have no objection to the paper being introduced in evidence.

The Presiding Officer—It will be received in evidence.

Hosted by Google

EXHIBIT GG.

SUBDIVISION.	Section.	Town.	Range.	Acres.	REMARKS.
N e ¼ of n w ¼	12	1 n	16 w	40	Pat. Proof Filed, X 2,091
N ½ of s w ¼	5	8 n	1 w	80	" " --------
N e ¼ of n w ¼	23	11 n	10 w	40	" " X 4,540
S ½ of n e ¼	13	12 n	10 w	80	" " --------
N w ¼ of n e ¼	13	12 n	10 w	40	" " --------
S w ¼ of s w ¼	17	2 s	16 w	40	" " --------
S e ¼ of n e ¼	11	10 n	4 e	40	" " --------
N w ¼ of n e ¼	11	10 n	4 e	40	" " --------
N e ¼ of s w ¼	20	10 n	4 e	40	" " 221 H.
N e ¼ of n w ¼	22	10 n	4 e	40	" " --------
N e ¼ of s e ¼	15	11 n	4 w	40	" " --------
N w ¼ of n e ¼, and n e ¼ of n w ¼	10	13 n	4 w	80	----------
W ½ of n e ¼	28	15 n	4 w	80	----------
N w ¼ of s w ¼	15	15 n	5 w	40	----------

"*Com'r State Land Office, Lansing, Mich.:*

"Please reserve the above list of lands on my contract, No. 29,—Ionia, Houghton Lake and Mackinac State road.

"E. HALL.

"Per L. B. POTTER.

"*Lansing, Dec. 14, 1870.*"

Indorsed on the back as follows:

"Geo. L. Hitchcock, Dec. 14, 1870. Rec'd Dec. 19, 1870. "Recorded, page 276."

By Mr. Shipman:

Question. Then all the lands which Mr. Hall patented, had been previously reserved to Mr. Hall?

Answer. They had been reserved to Mr. Hall at the time I drew the order.

RE-EXAMINATION OF L. B. POTTER.

Examined by Mr. Manager Huston:

Question. Do you understand why the patents were issued to Mr. Munroe in this case, as the assignee of Mr. Hewitt, if those lands were reserved in Mr. Hall's contract. The patent to part of those lands is on file in evidence, and it shows that it was issued to Mr. Munroe, as the assignee of Cyrus Hewitt?

Answer. I do not know anything about that now.

Hosted by Google

Q. What interest had Cyrus Hewitt in these lands, that the certificate of purchase had been issued to him?

A. I cannot tell you.

Q. Do you know whether this reservation was released, and they were afterwards reserved by Mr. Hewitt?

A. I think not.

Q. Do you know when Mr. Hewitt's resrevation was put on, whether it was before or after the one you have been testifying with regard to?

A. I think if Mr. Hewitt had them reserved, it must have been before they were reserved to Mr. Hall.

Q. Have you looked at the plat-book to see whether they were marked as reserved to Mr. Hewitt?

A. I have not looked at the plat-book; but in anything that was brought before me yesterday, I do not remember that Mr. Hewitt's name was in connection with them. The orders that were sent to me, if I remember, said nothing about Mr. Hewitt. The order said: "Commissioner State Land Office. Please patent"—certain descriptions named there—"to James T. Munroe, and charge to my account."

Q. I did not know but you might have known. What I wanted to ascertain was, why these patents were issued to Mr. Hewitt instead of Mr. Hall?

A. I did not know that they were issued to Mr. Hewitt.

Q. When you released the reservation of Mr. Hall upon the Smith lands, it was after it was ascertained at the office, by the statements that were made there, that Mr. Smith had sufficient unmatured scrip to hold the lands, was it not?

A. It was after that matter had been started up in the office, and Mr. Smith claimed he had sufficient to hold the lands.

Q. After it was found there was a mistake in the accounts, and there was a balance his due—

The Presiding Officer—Before the witness leaves the stand, I wish to call your attention to page 312 of the journal of yesterday's proceedings. Towards the bottom of the right-hand

Hosted by Google

column, on that page, it seems to me there is a mistake, as the Chair recollects it, both in the question and in the answer. The question, as it is here, is "Did Mr. Gillam furnish you a bid?" I think the question should be "Did Mr. Gillam furnish you a list?" And the answer should be "Five 80 acre lots;" whereas in the printed testimony it is "Five acre lots."

It is admitted that the Chair's recollection of the testimony is correct, and the testimony is corrected, as stated by the Chair.

By Mr. Manager Cochrane:

Question. Those orders which you gave yesterday, most of them appear to have a description of land attached to them, do they not?

Answer. Yes, sir.

Q. You stated that your arrangement with Mr. Hall, or your orders from Hall, were to furnish Barnard with scrip, within a certain limited extent, when he wanted it?

A. To a limited extent; not within a certain limited extent. The understanding was, not to any great extent, but a limited extent.

Q. Why were these descriptions attached to your orders of scrip?

A. You mean the orders to patent?

Q. If I recollect them. I have been trying to find some of them. My recollection was, that each one of these orders for scrip simply had attached to them a description of land, and I think an order for a patent, perhaps?"

A. I think that is so. "Please patent certain sections to me, so and so, and charge to my account." I think, in each case, the description of land was so stated, because I understood the arrangement to include not only the scrip, but certain descriptions of land.

A. Then Mr. Barnard, when he received scrip, was to purchase land from Mr. Hall's list?

A. Yes, sir; all the orders that I gave him, I think, were to

Hosted by Google

locate land that had been reserved for Mr. Hall, the scrip and the reservation together.

Q. Was it not a part of the arrangement that Barnard, when he received this scrip, should take the lands which he required from Mr. Hall?

A. I think that was a part of the arrangement. I think he did take it from his reservation.

Q. It seems that he did, as a matter of fact; but was not that a part of the arrangement?

A. That, as I understood it, was a part of the arrangement.

Q. Then, when you stated the orders from Mr. Hall to give Mr. Barnard a limited amount of scrip, you did not make a statement of the full understanding?

A. Perhaps not. I do not remember just how fully I explained the order.

Q. You did not say why these orders were—I think all of them—accompanied by an order for specific land?

A. I think the question was not asked of me.

The Presiding Officer—The Senator from the Twenty-fifth sends up the following question. The Secretary will read the question.

The Secretary read the queston, as follows:

"Question—Did you understand, the time the reservation was made by Barnard on the Hall contract, that they were entered for the benefit of Barnard, and that Hall had no interest in the lands, and received no pay and had no interest in the pay whatever; but that it was Barnard's proceeds on the lands to all intents and purposes?"

Answer. No, sir; I could not say that.

Q. Was not that the effect of it?

Mr. Shipman—One moment. That is a question for us to judge of, and not the witness.

Mr. Manager Cochrane—I will withdraw the question. It probably involves a legal question.

Mr. Manager Grosvenor—I want to ask you another ques-

Hosted by Google

tion. Can you give a list of the dates when these advances of scrip have been made to Mr. Barnard? Will you state the first?

Answer. The first was January 27th, 1871, $100.

Q. Are there any credits for return of that scrip? I understand that he borrowed that scrip. Are there any returns for credit?

A. I did not intend to say that he borrowed scrip.

Q. Does he give it to him?

A. I understand it that Mr. Barnard and Mr. Hall are to settle that matter, as I stated yesterday. I did not fix the price of the scrip, but left that matter for Barnard and Hall.

Q. Then he does not return the scrip to you, or pay you for the scrip?

A. He does not; there was no arrangement between me and Barnard that he should, but he should settle with Hall.

Q. Then, that as to Hall is simply a matter of settlement, and not charges?

A. No, sir.

Q. You know nothing about how they are settled?

A. No, sir.

Q. You do not know whether Barnard has paid Hall anything for this scrip?

A. I do not know that he has settled at all; I do not know that he has.

RE-CROSS-EXAMINATION OF L. B. POTTER.

Examined by Mr. Shipman:

Question. I find that the patent for the N. E. ¼ of the S. W. ¼, section 20, town 10 N., range 4 E., issued to James T. Munroe as assignee of Cyrus Hewitt, states that Cyrus Hewitt purchased the land on the 28th January, 1871. The reservations to Mr. Hall were December 14, 1870. Have you any knowledge how that forty got from Mr. Hall to Mr. Hewitt?

Answer. I have no knowledge. Oh, yes, I have; it is in an

Hosted by Google

order I drew; but how it got from Hewitt to Munroe I know nothing about.

Q. You knew how it got from Hall to Hewitt?

A. The order I got was asking the Commissioner of the Land Office to patent it to Mr. Hewitt; but I know nothing about the assignment from Hewitt to Munroe.

Q. That is one of the descriptions on that list?

A. One of the descriptions on the order shown me yesterday.

Q. That was the list of reservations of 1870?

A. Yes, sir, it was on that, I think.

By Mr. McGowan:

Question. You are clerk of the board of road commissioners, I think.

Answer. Yes, sir.

Q. In auditing the account of Obed Smith, have you any recollection of any portion of his account being audited twice.

A. Yes, sir.

Q. State the facts in regard to it.

A. On a certain contract I remember, which I cannot now state, the local commissioner committed two errors. I think they were both in the same contract. In writing up the contract he called it twelve miles, where, as it was shown afterwards when he went to close up the contract for Mr. Smith, he had built more miles, and it showed at the close and ending of the contract—it showed thirteen miles,—one mile more than was embodied in the contract. I had kept the contract for so much a mile, and had given him credit for twelve miles, and when he came before the Board of Control and made his showing of thirteen miles, he was allowed an extra mile. That was one mistake the commissioner made. Then in accepting the work, I found that he had accepted one parcel twice over, and really had made the acceptance of thirteen miles. One of the miles was accepted and one that should have been accepted was not accepted at all. In this way the account became mixed. I found after the work had been accepted by

Hosted by Google

the Board (this error), that it had been accepted twice, and I went to the Land Office and asked them to hold back $1,250 for this double acceptance.

Q. You went to the Land Office and asked them to hold back $1,250.

A. Yes, sir; and after that was made straight, he actually got $1,250 back for the mile that had been completed, which had not been credited to him before.

Q. Now, had the Land Commissioner any notice of the extra mile, that he might give him credit on his books for it.

A. Not at all, and not until that settlement, and his correction.

Q. Was that the settlement in which the differences arose between the Commissioner and Mr. Smith?

A. I think that was a portion of the differences.

Q. It was at that time?

A. Yes, sir. I think that was the time. Mr. Smith claimed that he ought to have more credits than he had, and there were errors, and that then they were investigated.

Mr. Shipman—That is all.

RE-DIRECT EXAMINATION OF L. B. POTTER.

Examined by Mr. Manager Grosvenor:

Question. Didn't you state yesterday in substance that this credit belonged to Mr. Hall? Didn't you say that those purchases were to all intents and purposes for the benefit of Mr. Barnard so far as you knew?

Answer. Well, I don't remember distinctly whether I stated that.

Q. How is it now? If you don't remember now, what is the fact?

A. I think it was for the control of Mr. Barnard. I might say, perhaps, that my idea would be that it was for his benefit, beyond what he might pay Mr. Hall for the reserves and the scrip. I always understood that Barnard was to settle with Hall, both for the reserves and the scrip.

Hosted by Google

Q. And the profits of the scrip, as you understand, to be for Mr. Hall's and Barnard's benefit?

A. Yes, sir.

Q. Have you dealt somewhat largely in lands during the past year,—in the purchase of lands yourself?

A. Not very largely.

Q. Have you somewhat?

A. I have.

Q. To what extent? How many thousand acres?

A. I never purchased a thousand acres in my lifetime.

Q. You have purchased some?

A. Yes, sir, some.

Q. Are you interested in certain reservations now, on your own account?

A. A few.

Q. Were these reservations made on unmatured scrip, by yourself?

A. The reservations that I am interested in—that I call myself interested in—I have made on Mr. Hall's contract.

Q. You do not own any unmatured scrip on your own account?

A. I think I don't to-day.

Q. Did you at the time these lands of yours were reserved?

A. I think not.

Q. Had you the permission of Mr. Hall to have them reserved on his contract?

A. I had.

The Presiding Officer—I notice two or three mistakes in yesterday's journal, in the evidence of the witness yesterday. The question is "How many boxes are there?" and in the answer "The books devoted to this individual account I should guess one hundred," and it should be "The boxes devoted to individual accounts is one hundred."

Answer. Yes, sir; more or less.

Q. "Boxes" instead of "books?"

A. Yes, sir.

Hosted by Google

By Mr. Manager Grosvenor:

Question. Whether you are not interested in the lands with Mr. Hall, covered by these reservations, or in some of them?

Answer. A very few pieces.

Q. Are you interested in the contracts?

A. No, sir; not interested, whatever, in the contracts.

Q. You receive compensation for your services, from Mr. Hall?

A. I have never settled with Mr. Hall.

Q. You have received compensation for your services, have you not?

A. I received—if this is compensation—I received the accommodation to reserve certain pieces of land, of which I talked to Mr. Hall about. He said I could reserve them on his contract, and we would, when we got through, close it up as we might agree.

Q. And that was the consideration for your services for him?

A. No other consideration has ever been stated.

Q. Was there any other expected by you?

A. Well, I have not expected to do a great deal of work for a man for nothing.

By Mr. Manager Huston:

Question. When was it you drew the order to Mr. Hewitt?

Answer. January 27th, 1871.

Q. What did Mr. Hewitt pay you for that order?

A. I stated yesterday that that was in the hundred dollar order that I drew for Mr. Barnard. I charged the amount of Mr. Hall's scrip to Mr. Barnard.

Q. Then, although you drew an order to Mr. Hewitt, you did not charge anything to Mr. Hewitt?

A. Mr. Barnard requested me to charge that scrip to him, and to draw the order for the land to be paid to Mr. Hewitt.

Q. And the order to Mr. Hewitt was a mere matter of accommodation?

A. So far as I know.

Hosted by Google

Q. Did Mr. Edmonds know that you was the agent of Mr. Hall?

A. I think he did.

Q. Knew what the arrangement was between you and Mr. Hall?

A. I don't think he did.

Q. He knew you was his agent?

A. He knew that I was his agent before he would recognize my orders. I think there is written authority for me to act, as his agent, filed with Mr. Edmonds.

RE-CROSS-EXAMINATION OF L. B. POTTER.

Examined by Mr. Shipman:

Question. Are you a clerk in the Land Office?

Answer. I am not.

Q. Has the Commissioner of the Land Office any control over you?

A. I don't think he has. I never acknowledged it.

The Presiding Officer—I would call the attention of the Honorable Managers, and the counsel for the respondent, to rule 23.

Mr. Shipman—I would like to call the attention of the Senate to page 313 of the "Impeachment Proceedings." The language used there is this: "Devoted to this individual account;" it should read: "Devoted to these individual accounts."

The Presiding Officer—That is the recollection of the Chair.

Mr. McGowan—In that connection, I would call the attention of the Senate to page 244 of the "Impeachment Proceedings," line fourteen from the bottom. The question, as printed, is, "How much was to run to you in the whole?" The answer is, "1725." The question was asked by myself, and should have been, "How much money was returned to you?" and the answer was, "$17.25." In the next page, 245, "Michigan Falls" should have been "Niagara Falls."

Hosted by Google

TESTIMONY OF G. B. GRISWOLD.

G. B. Griswold, a witness, produced, sworn, and examined on the part and behalf of the House of Representatives, testified as follows:

Examined by Mr. Manager Grosvenor:

Question—Are you a clerk in the Land Office?

Answer—I am.

Q. How long have you been so?

A. Since a year ago last August.

Q. Are you acquainted with the books and records?

A. Somewhat.

Q. Will you look upon that book before you and see whether that is one of the records of the office and what it is called?

A. The primary school book.

Q. Will you look upon the right-hand page? What page is it?

A. Page 267.

Q. And the last entry, I think it is?

A. Yes, sir.

Q. Will you read the last entry?

A. [Witness reads.] "Two fractional lots, certificate issued to Ely Godard, lots 5 and 6, Dec. 30, 1871. No. of certificate 10831."

Q. What is the number of acres?

A. In lot 5 there is 21 acres and 31 hundredths.

Q. Together what are they,—the two fractions? Is'nt it there entered on the book?

A. Yes, sir; 59 acres and 51 hundredths.

Q. What was the price of that land.

A. Four dollars per acre, I believe.

Q. A quarter down would be how much?

A. One dollar per acre.

Q. A quarter down would be fifty-nine dollars and eighty cents?

A. Fifty-nine dollars and eighty cents, for two lots.

Hosted by Google

Q. That was entered at what date?

A. December 30, 1871.

Q. By whom?

A. Ely Godard.

Q. Have you examined the records and files in the Land Office, for an application of Godard, referring to that entry?

A. I examined them this morning, somewhat,—that is, I examined the letter-book and the box of Ely Godard.

Q. What was the result?

A. In regard to what?

Q. In regard to the application; do you find it?

A. I do not; no, sir.

Q. Did you examine for the affidavit?

A. I did.

Q. Required to be made in such cases?

A. I made an examination for a timber affidavit, as requested.

Q. It is the rule of the office that in entering these school lands it should require an affidavit that it is not valuable for timber?

A. Well, I don't know that it is always. I never understood that it was always the rule. Where they were satisfied that it was not valuable for pine, they did not require the affidavit; but I am not exactly clear on that. I had nothing to do with the receiving of affidavits.

Q. It is usual to require them, is it not?

A. In that case it is usual in entering lands—

Q. Answer my question. Is it not usual in the office in entering school lands to require an affidavit that it is not valuable for timber, but only for agricultural purposes?

A. Not where it is not valuable for timber.

Q. Will you answer that question?

A. State it a little more explicitly and perhaps I will understand it.

Q. Will you answer the question?

A. If you will state it a little more explicitly, I will understand it.

Hosted by Google

Q. Is it not the usual practice in your office to require an affidavit that the land is not valuable for timber, and is only valuable for agricultural purposes, before they are allowed to enter it?

A. I cannot swear with regard to it. I am not familiar enough. I have not had anything to do with the sales of land.

Q. Are you not familiar with that practice in the office?

A. I am not familiar with the practice of the Deputy and chief clerk.

Q. What is your business there?

A. Now I am waiting upon customers; very recently, however.

Q. You have to give them the necessary information in guiding them to make the entries?

A. Yes, sir.

Q. Are you not informed enough to tell a gentleman applying for land, what is and what is not necessary to accomplish the purpose?

A. I am.

Q. A man applies to buy a piece of school land,—are you not informed enough to tell him whether it is necessary to file an affidavit as to lumber qualities?

A. I always tell him, where it is valuable for pine, he will be required to file an affidavit.

Q. What did you mean by saying you were not familiar enough to say about that?

A. I said I was not familiar enough to say whether they always required it.

Q. I have not asked you about always. I asked you if it was not a general rule.

A. I believe so.

Q. Then you are informed enough on that subject. Is it not your instructions?

A. I have not received any verbal instructions,—it is only as I understand it.

Hosted by Google

Q. And yet you are detailed to wait upon customers?

A. Yes, sir, have been for the last few days; about a week, I guess.

Q. What were your duties before you were detailed in this direction?

A. Immediately previous to that I occupied the draughtsman's chair for a very short time; previous to that, I had charge of the field-note department.

Q. You say it is the practice to require an affidavit that the land is not valuable for lumber, except when you know that it is not. Is that what you say?

A. I think that is the rule.

Q. How do you ascertain that it is not valuable? What means has the office of ascertaining how it is not valuable?

A. I do not know that they have any.

Q. Have you been interested in the purchase of State lands while you have been a clerk in the office?

A. I have not purchased any.

Q. Not in your own name?

A. No, sir.

Q. Have you been interested in purchases in the names of others?

A. I have not been interested indirectly in the purchase of lands.

Q. Do not trifle with your conscience, young man; just answer. You know what I mean.

A. I believe I am under oath.

Mr. McGowan—It is not necessary to lecture the witness. He is yours.

Question. I ask you if you have not been interested in the purchase and sale of lands belonging to the State, since you have been a clerk under Edmonds.

Answer. I have not been interested in the purchase of land. I have had an interest, perhaps, in lands.

Q. State how you were interested.

Hosted by Google

A. You can call it as acting as agent for others. I have negotiated for others for the sale of a few pieces.

Q. For the purchase?

A. No, sir.

Q. Have you been interested in the profits?

A. Yes, sir.

Q. Was it not the understanding that you should be interested in the profits when the entries were made?

A. I do not know; there were one or two pieces, and I do not remember whether there was an understanding that I should have an exact interest in the profits. He was to pay me a certain amount for selling.

Q. Who was the man?

A. Mr. Porter.

Q. What Porter?

A. E. S. Porter.

Q. How many pieces?

A. Two 40's, I think.

Q. State what the arrangement was between you and him?

A. He entered the land,—reserved them. He was a scrip owner; and I think he told me, if I would endeavour to sell them,—write letters to parties, and endeavor to sell them,—he would pay me for it.

Q. When was that arrangement made,—before he entered them?

A. I do not remember.

Q. Was it not at the time he entered them?

A. I do not remember. I hardly think it was at the time.

Q. When did you receive that money?

A. I sold the land myself for Mr. Porter, and received the money for it.

Q. Did you not sell them before they were patented?

A. Certainly, and they were reserved to Mr. Porter.

Q. And they were held by Mr. Porter until you had sold them to third parties?

A. Certainly?

Hosted by Google

Q. You sold them and then had them patented?

A. No, he filed his release.

Q. Did you not advance the money yourself to pay for them?

A. I think I did. Mr. Porter was in Alpena when the sale was made.

Q. Who signed the application?

A. Mr. Porter.

Q. Did he have a certificate of the sale?

A. He had them reserved.

Q. On whose contract?

A. I think he had them reserved on Obed Smith's contract—I think it was his.

Q. And you advanced the money?

A. Yes, sir.

Q. Why did you not pay him out of Obed Smith's contract?

A. When the sale was made, if I remember distinctly, I think Mr. Porter did not have scrip enough to cover these lands.

Q. Did he ask you to make the advance of this money?

A. No, sir.

Q. Why did you do it?

A. I found, in making up the account, he did not have scrip enough to patent these lands.

Q. Who informed you of it?

A. I think I looked over his account myself.

Q. That is the way you got your information?

A. Yes, sir.

Q. You advanced the money? How much advance did you get on the sale; how much did you make in that operation?

A. One 40 I think I sold for $100; I do not remember distinctly.

Q. How much the others?

A. I do not remember what I did get for them.

Q. You cannot remember that?

A. I do not remember it.

Q. How much did you make on the first sale?

Hosted by Google

A. I do not know how much Mr. Porter will allow me for my services.

Q. You have got the money?

A. Yes, sir; he has just returned from Alpena, and we have not made any settlement.

Q. When did you enter that?

A. When was the reserve made, or when was the patent made,—which do you mean?

Q. When was the patent made?

A. Last fall, I think.

Q. You have had the money since that?

A. Yes, sir.

Q. You have not seen him since that?

A. No, sir, he has just returned from Alpena.

Q. How long had this land been reserved before you had them patented?

A. I could not state.

Q. About how long?

A. From one to three months, I should think.

Q. Do you remember testifying before the committee of inquiry that it was about four months?

A. I told you I did not know, just as I have now. It might have been one, two, three, or four months, I presume I said.

Q. What other lands have you dickered with in the same manner?

A. I believe there was another piece, that Mr. Turner here in town got me to sell for him.

Q. When was that?

A. I do not remember now when it was.

Q. How much was there of it?

A. 40 or 80 acres,—I think 80.

Q. When was it?

A. Last fall, sometime.

Q. How much did you make in that operation?

A. I do not know; but I think Mr. Turner paid me $10 for

Hosted by Google

negotiating the sale. I knew nothing about the land. It was his land, and I sold it for him.

Q. Did he understand that if you would make a sale he would pay you for it?

A. He told me if I would negotiate for a sale of the land he would make it all right.

Q. Was that arrangement made at the time he had the land entered?

A. No, sir.

Q. Before?

A. I did not know when he entered the land. He entered on his own responsibility. I never asked him to enter it, or said a word to him about it.

Q. Whom did you sell it to?

A. I think Theodore Bathay.

Q. How much of an advance did he get above the minimum price?

A. I think he sold that for $160.

Q. That "forty?"

A. No; I think it was eighty.

Q. Been interested in any other case in the same manner?

A. I think I have been interested in one or two other pieces in the same way. I do not remember, though, where they were.

Q. Are there not some lands held now in the same way by parties?

A. No.

Q. Are you not interested in some lands now that were entered in the State?

A. There are some lands—no—I have the same charge of—they wish me to negotiate for the sale of them.

Q. Have you no interest in them otherwise than as an agent in selling them?

A. I do not know whether you would call it an agent or not.

Q. What do you call it?

Hosted by Google

A. The way that stands, it is optional for him to make it right with me. If I will negotiate for the sale of the land he will pay me something.

Q. He asks you to do so?

A. Yes, sir.

Q. Promises to pay you if you succeed in selling?

A. Yes, sir.

Q. Who fixes the price of compensation?

A. There is not any price fixed.

Q. Who instructs you as to the price that you are to charge for the land?

A. I believe, as a general thing, the price is fixed by the party who owns the land.

Q. How was it in the Bathay case,—did he fix the price?

A. Mr. Turner, I think, did; I do not remember.

Q. Will you give us the names of the other persons that you are interested with, in lands that are unsold?

A. One man's name is Roberts, I think.

Q. Nelson Roberts, Jr.?

A. No, sir, his name is not Nelson,—A. D., I think.

Q. Where does he live?

A. Saginaw.

Q. In how much land are you interested with him?

A. There was a "forty,"—I do not know but he has sold it, now.

Q. Did you not furnish him information in relation to that lot?

A. No, sir.

Q. Is that patented now?

A. I think it is.

Q. When was it patented?

A. It was patented—I don't remember,—some time ago.

Q. Can you remember pretty nearly the date?

A. No. I cannot remember what month.

Q. What makes you think it is patented at all?

Hosted by Google

A. Because I thought he sold it. I did not succeed in making a sale, and he sold it himself.

Q. Has he paid you anything for that?

A. No, sir.

Q. What other lots are there?

A. I do not remember any others, now.

Q. Can you think of any other person?

A. I do not think of any, now.

Q. What other ways have you of making money, in the office, besides selling lands for people, or being interested in lands.

A. I do not have any, unless it is gratuities, once in a while.

Q. What do you mean by gratuities?

A. I mean there have been such cases where there are parties who have offered me a little something for my kindness and attention to them.

Q. Can you remember whether you took it or not, when he offered it kindly to you?

A. I do not remember of ever refusing.

Q. How much have you received in that manner?

A. I could not tell you.

Q. Have you any opinion about it?

A. Not much;—I mean I have received but very little. I could not make an estimate. I could not guess.

Q. $100?

A. Oh, no.

Q. $50?

A. No. I do not think it would reach $15 the entire time that I have been in the office.

Q. Do you know whether Porter had an order from Smith to reserve on those contracts?

A. I do.

Q. How do you know that?

A. I have seen it.

Q. What kind of an order was it?

Hosted by Google

A. Like any order to reserve land.

Q. When you sold this land why was it not entered upon that order?

A. I think he had used his order so nearly up that there was not enough credit left.

Q. Had he any right to enter it upon that order?

A. Certainly.

Q. Was not that unmatured scrip? He had reserved it on unmatured scrip.

A. Had he any right to have it patented?

Q. Yes, sir.

A. I do not know.

Q. It was reserved on unmatured scrip?

A. When he reserved it.

Q. When he entered it, the scrip had not matured?

A. I hardly think it had,—I do not know.

Q. If it had matured could he have entered it then, according to the rules of his office?

A. If he had credit.

Q. Could he have entered it on that reservation, under that contract?

A. If the scrip was matured and he had credit.

Q. The reservation just as it was?

A. If it had not been used up,—you mean if he had not used it.

Q. That was reserved on Smith's contract.

A. Yes, sir.

Q. Now had he a right to enter it under Smith's contract?

A. I think he had. I think the scrip was not matured,—but I do not remember.

Q. Do you not understand that that Smith contract was assigned to Mr. Smith,—and that Smith never allowed Porter to enter for him?

A. I know that the land is reserved under an order from Smith to Porter,—and the regular order was filed.

Hosted by Google

Q. Did not Mr. Hewitt have an order for Bathay on the same contract to reserve?

A. I do not know anything about it. I do not know anything about Bathay's contracts, or anything about that; I have nothing to do there.

Q. Do not you know that this same contract that was assigned to Smith was used by Mr. Hewitt to reserve lands with it?

A. I have heard it the last few days.

Q. Did you not know it before?

A. I may have known it, but I never gave it any attention. I had nothing to do with that business.

Q. You were not interested to remember it?

A. No.

Q. Where do you reside when you are at home?

A. Allegan.

CROSS-EXAMINATION OF GEORGE B. GRISWOLD.

Cross-examined by Mr. McGowan:

Question. In the arrangement with Mr. Roberts, were you in any way interested in the land except in the sale of it?

Answer. Nothing, only as he was in the office one day he requested me to write letters to parties owning land adjoining. That was all the interest I had.

Q. Can you tell about when that was?

A. It was not a great while ago.

Q. Did you know anything about the purchase of that land from the State by Roberts?

A. Nothing about it at all.

Q. Do you know how he got the land from the State?

A. I do not know anything about it.

Q. In the piece that you sold for Turner,—were you in any way interested in the purchase of that land from the State?

A. Mr. Turner had entire charge of that. I never spoke to him about the land until he requested me to sell it for him.

Q. Do you know how he got that land from the State,—did you know when he got it from the State?

Hosted by Google

A. No, sir.

Q. Do you know when he spoke to you about selling it?

A. Last fall sometime.

Q. In the two "forties" that you sold for Porter, were you interested in the purchase of that land from the State?

A. No, I was not interested in the purchase of it.

Q. Were you interested in the land in any way other than the sale of it?

A. No, sir.

Q. Did you sell both the "forties?"

A. I did.

Q. You say that that land was reserved on Obed Smith's contract?

A. Yes, sir, it was reserved, I think, upon another contract.

Q. Other than the Bathay contract?

A. Yes, sir, at first, and I think that Porter had it transferred to Obed Smith's, after a time. I do not remember exactly how it was.

Q. Did you say that Obed Smith gave him an order for that reserving?

A. He had a thousand-dollar order from Obed Smith.

Q. To reserve lands to the amount of a thousand dollars?

A. Yes, sir.

Q. And these two "forties" were put upon that reservation?

A. Yes, sir.

Q. Do you know whether that order was so formed that the land might be patented to Porter?

A. I do not remember about that.

Q. Do you know when the reservation was made in favor of Porter, on that order for these two "forties?"

A. I think I remember the time when Porter made the reservation.

Q. Can you fix it somewhere near?

A. The reservation is on file, and dated,—you could very easily tell about that. I cannot remember about it.

Hosted by Google

Q. Is that not in accordance with the rule of the office, to keep them there, in the box or in that letter-book?

A. I am inclined to think that would be the proper place, in the box or in the letter-book.

Q. Are you not any more certain than a little inclined to believe?

A. No, sir.

Q. Did you ever know of their being in any other place?

A. I have never known anything about them.

Q. Have you ever made search before for applications?

A. I do not remember of ever making search for an application before.

Q. And you are confident that it is not in that box or letter-book?

A. To the best of my knowledge.

Q. What clerk has charge of that.

A. The Deputy, and Mr. Robinson, chief clerk.

RE-CROSS-EXAMINATION OF G. B. GRISWOLD.

Re-cross-examined by Mr. McGowan:

Question. In making applications to the Deputy, or, in his absence, to the chief clerk, for the entry of land by scrip, have you ever had occasion to pass him money on the application at any other times except these you have spoken of?

Answer. Yes, sir, I have.

Q. In waiting upon parties, is it not common that they pass it in to the waiting clerk and he to the Deputy.

A. Yes, sir.

Q. Passing in the application with the money.

A. Yes, sir.

By Mr. Manager Huston:

Question. When did you commence to act as waiting clerk, waiting on customers?

Answer. I think about four or five days ago.

Hosted by Google